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# Rules and Regulations

Federal Register
Vol. 54, No. 37
Monday, February 27, 1989



## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

### 7 CFR Part 907

**[Navel Orange Regulation 689]**

### Navel Oranges Grown in Arizona and Designated Part of California; Limitation of Handling

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** Regulation 689 establishes the quantity of California-Arizona navel oranges that may be shipped to market during the period February 24 through March 2, 1989. Such action is needed to balance the supply of fresh navel oranges with the demand for such oranges during the period specified due to the marketing situation confronting the orange industry.

**EFFECTIVE DATES:** Regulation 689 (§ 907.989) is effective for the period February 24, 1989, through March 2, 1989.

**FOR FURTHER INFORMATION CONTACT:** Jacquelyn R. Schlatter, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, Room 2528–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 447–5120.

**SUPPLEMENTARY INFORMATION:** This final rule is issued under Marketing Order 907 (7 CFR Part 907), as amended, regulating the handling of navel oranges grown in Arizona and designated part of California. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended, hereinafter referred to as the Act.

This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of the use of volume regulations on small entities as well as larger ones.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 125 handlers of California-Arizona navel oranges subject to regulation under the navel orange marketing order, and approximately 4,065 producers in California and Arizona. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual gross revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of handlers and producers of California-Arizona navel oranges may be classified as small entities.

This action is consistent with the marketing policy for 1988–89 adopted by the Navel Orange Administrative Committee (Committee). The Committee met publicly on February 21, 1989, in Visalia, California, to consider the current and prospective conditions of supply and demand and recommended by an eight to two vote a quantity of navel oranges deemed advisable to be handled during the specified week. The Committee reports that the market for navel oranges is weaker.

Based on consideration of supply and market conditions, and the evaluation of alternatives to the implementation of prorate regulations, the Administrator of the AMS has determined that this final rule will not have a significant economic impact on a substantial number of small entities.

Pursuant to 5 U.S.C. 553, it is further found that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice and engage in further public procedure with respect to this action and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared policy of the Act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. To effectuate the declared purposes of the Act, it is necessary to make this regulatory provision effective as specified, and handlers have been apprised of such provision and the effective time.

**List of Subjects in 7 CFR Part 907**

Arizona, California, Marketing agreements and orders, Navel, Oranges.

For the reasons set forth in the preamble, 7 CFR Part 907 is amended as follows:

## PART 907—NAVEL ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA

1. The authority citation for 7 CFR Part 907 continues to read as follows:

**Authority:** Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 907.989 is added to read as follows:

**Note.**—This section will not appear in the Code of Federal Regulations.

**§ 907.989 Navel Orange Regulation 689.**

The quantity of navel oranges grown in California and Arizona which may be handled during the period February 24, 1989, through March 2, 1989, are established as follows:

(a) District 1: 1,452,000 cartons;

(b) District 2: 198,000 cartons;

(c) District 3: unlimited cartons;

(d) District 4: unlimited cartons.

Dated: February 22, 1989.

Robert C. Keeney,

*Deputy Director, Fruit and Vegetable Division.*

[FR Doc. 89-4469 Filed 2-23-89; 8:45 am]
BILLING CODE 3410-02-M

## 7 CFR Part 910

**[Lemon Regulation 654]**

## Lemons Grown in California and Arizona; Limitation of Handling

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** Regulation 654 establishes the quantity of fresh California-Arizona lemons that may be shipped to market at 350,000 cartons during the period February 26 through March 4, 1989. Such action is needed to balance the supply of fresh lemons with market demand for the period specified, due to the marketing situation confronting the lemon industry.

**EFFECTIVE DATES:** Regulation 654 (§ 910.954) is effective for the period February 26 through March 4, 1989.

**FOR FURTHER INFORMATION CONTACT:** Beatriz Rodriguez, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, Room 2523, South Building, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 447-5697.

**SUPPLEMENTARY INFORMATION:** This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory action to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Agricultural Marketing Agreement Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 85 handlers of lemons grown in California and Arizona subject to regulation under the lemon marketing order and approximately 2500 producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual gross revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of handlers and producers of California-Arizona lemons may be classified as small entities.

This regulation is issued under Marketing Order No. 910, as amended (7 CFR Part 910) regulating the handling of lemons grown in California and Arizona. The order is effective under the Agricultural Marketing Agreement Act (the "Act," 7 U.S.C. 601-674), as amended. This action is based upon the recommendation and information submitted by the Lemon Administrative Committee (Committee) and upon other available information. It is found that this action will tend to effectuate the declared policy of the Act.

This regulation is consistent with the marketing policy for 1988-89. The Committee met publicly on February 21, 1989, in Los Angeles, California, to consider the current and prospective conditions of supply and demand and unanimously recommended a quantity of lemons deemed advisable to be handled during the specified week. The Committee reports that demand for lemons is good.

Pursuant to 5 U.S.C. 553, it is further found that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice and engage in further public procedure with respect to this action and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared purposes of the Act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. It is necessary, in order to effectuate the declared purposes of the Act, to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

### List of Subjects in 7 CFR Part 910

Marketing agreements and orders, California, Arizona, Lemons.

For the reasons set forth in the preamble, 7 CFR Part 910 is amended as follows:

### PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

1. The authority citation for 7 CFR Part 910 continues to read as follows:

**Authority:** Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

2. Section 910.954 is added to read as follows:

**Note.**—This section will not appear in the Code of Federal Regulations.

**§ 910.954 Lemon Regulation 654.**

The quantity of lemons grown in California and Arizona which may be handled during the period February 26, 1989, through March 4, 1989, is established at 350,000 cartons.

Dated: February 22, 1989.

**Robert C. Keeney,**

*Deputy Director, Fruit and Vegetable Division.*

[FR Doc. 89-4470 Filed 2-23-89; 8:45am]

**BILLING CODE 3410-02-M**

## 7 CFR Part 971

**[FV-89-007]**

## Lettuce Grown in Lower Rio Grande Valley in South Texas; Amendment to Continuing Handling Regulation Authorizing a New Container and Changing the Effective Period

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** This final rule authorizes a new carton for shipping South Texas lettuce and changes the beginning of the effective period of the handling regulation from December 1 to November 15. The intent of these actions is to meet the industry's need for a container of the proper dimensions for palletization and to make the effective period of the handling regulation coincide with the shipping season.

**EFFECTIVE DATE:** March 29, 1989.

**FOR FURTHER INFORMATION CONTACT:** Todd A. Delello, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525-S, Washington, DC 20090-6456, telephone (202) 475-5610.

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Agreement No. 144 and Marketing Order No. 971 (7 CFR Part 971), as amended, regulating the handling of lettuce grown in the Lower Rio Grande Valley in South Texas. The agreement and order are authorized by the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the Act.

This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 10 handlers of South Texas lettuce subject to regulation under the marketing order, and approximately 30 producers in the production area. The Small Business Administration (13 CFR 121.2) has defined small agricultural producers as those having annual gross revenue for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of handlers and producers of South Texas lettuce may be classified as small entities.

As of December 12, 1988, estimated South Texas lettuce acreage planted was 2,434 acres compared to 1,528 acres at the same time in 1987. Total plantings for the 1988–89 season are expected to approximate 2,500 acres, which is up considerably from last year's total of 1,629 acres. Total shipments of South Texas lettuce for the 1987–88 crop were approximately 738,000 cartons. Total shipments for the 1988–89 crop are projected by the committee at 750,000 cartons. The majority of the crop is shipped to the fresh markets.

The handling requirements for South Texas lettuce are specified in § 971.322 (51 FR 2, January 2, 1986). The current requirements for South Texas lettuce specify the inside dimensions of the four containers that may be used to pack lettuce and the number of heads that may be packed per container. Additionally, inspection is required during the period beginning December 1 and ending March 31 each season, and packaging lettuce on any Sunday or on Christmas Day is prohibited.

This final rule authorizes a new container for shipping South Texas lettuce and changes the beginning of the effective period for the handling regulation from December 1 to November 15. These changes were unanimously recommended by the South Texas Lettuce Committee.

A proposal inviting comments on this action was published in the **Federal Register** on December 12, 1988 (53 FR 49886). Interested persons were invited to submit comments until January 11, 1989. No comments were received.

The four containers currently authorized under the handling regulation do not have the correct dimensions necessary to be properly stacked on pallets. The recommended new container, with inside dimensions of 23¼ inches (length) x 15¼ inches (width) x 10⅜ inches (depth), is of proper size to be palletized. The dimensions of a standard pallet are 48 inches (length) x 40 inches (width). The recommended container will be stacked in layers of five on the pallet, and 100 percent pallet utilization will be possible when using such container.

The majority of lettuce shipped from California and Arizona, the top two lettuce producing States, is shipped on pallets. The use of pallets reduces the handling of individual containers, which in turn reduces damage caused by excessive handling and reduces handling costs. Palletized loads are preferred by produce warehouses and retail outlets because of the ease of loading and unloading palletized merchandise by fork lifts and pallet jacks. Authorizing a container of the correct size to be palletized should facilitate the efficient movement of lettuce from the packinghouse to the consumer.

The use of this container will enable lettuce shippers to take advantage of the benefits derived by the use of pallets. Texas lettuce shippers will also be able to fill orders for palletized loads and compete with California and Arizona shippers for this market. The new container is designated as carrier container No. 79–47, which is consistent with the manufacturer's identification number. In addition, this regulation requires that only 18, 24, or 30 heads of lettuce may be packed in this container. Packing 24 or 30 heads of lettuce in the approved container is the industry norm. However, the committee believes it is necessary to include the 18-count limit to allow for packing larger heads of lettuce.

In recent years, the shipping season for South Texas lettuce has begun in mid-November rather than early December. This shift has been caused by changes in cultural practices, such as the use of black plastic and the transplanting of seedlings. The committee has recommended that the beginning of the effective period for the handling regulation be changed from December 1 to November 15 so that it will coincide with the shipping season. This action provides for the uniform application of handling requirements to all shipments of South Texas lettuce.

Based on the above, the Administrator of AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, including the information and recommendations submitted by the committee and other available information, it is found that the rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

**List of Subjects in 7 CFR Part 971**

Marketing agreements and orders, Lettuce, South Texas.

For the reasons set forth in the preamble, 7 CFR Part 971 is amended as follows:

## PART 971—LETTUCE GROWN IN LOWER RIO GRANDE VALLEY IN SOUTH TEXAS

1. The authority citation for 7 CFR Part 971 continues to read as follows:

**Authority:** Secs. 1–19, 48 Stat. 31 as amended; 7 U.S.C. 601–674.

2. Section 971.322 is amended by revising the introductory text, redesignating paragraphs (a)(4) and (a)(5) as (a)(5) and (a)(6), respectively, and adding new paragraphs (a)(4) and (b)(3) to read as follows.

**Note.**—This regulation will appear in the Code of Federal Regulations.

**§ 971.322 Handling regulation.**

During the period beginning November 15 and ending March 31 each season, no person shall handle any lot of lettuce grown in the production area unless such lettuce meets the requirements of paragraphs (a), (b), and (c) of this section, or unless such lettuce is handled in accordance with paragraph (d) or (e) of this section. Further, no person may package lettuce during the above period on any Sunday, or on Christmas Day unless approved in accordance with paragraph (f) of this section.

(a) * * *

(4) Cartons with inside dimensions of 10⅜ inches x 15¼ inches x 23¼ inches (designated as carrier container No. 79–47), or

* * * * *

(b) * * *

(3) Lettuce heads in carrier container No. 79–47 may be packed only 18, 24, or 30 heads per container.

* * * * *

Dated: February 21, 1989.

Robert C. Keeney,

*Deputy Director, Fruit and Vegetable Division.*

[FR Doc. 89-4429 Filed 2-24-89; 8:45 am]

BILLING CODE 3410-02-M

## DEPARTMENT OF JUSTICE

### Immigration and Naturalization Service

### 8 CFR Part 211

**[INS No. 1105-88]**

### Alien Commuters

**AGENCY:** Immigration and Naturalization Service, Justice.

**ACTION:** Final rule.

**SUMMARY:** This rule amends 8 CFR 211.5 to provide that commuter aliens, in order to retain resident status, must demonstrate either that they have not been unemployed for a continuous period of six months or that they have worked ninety days in the aggregate during the twelve-month period preceding their application for admission into the United States. The current regulations governing alien commuters provide for a loss of permanent resident status to commuters who have been out of regular employment in the United States for a continuous period of six months. This rule would allow migrant workers who do not wish to relocate to continue traditional patterns of seasonal migration.

**EFFECTIVE DATE:** February 27, 1989.

**FOR FURTHER INFORMATION CONTACT:** Aaron Bodin, Deputy Assistant Commissioner, Special Agricultural Workers (SAW), (202) 786-3658.

**SUPPLEMENTARY INFORMATION:** The regulations at 8 CFR 211.5 provide that an alien lawfully admitted for permanent residence may reside in a contiguous foreign territory and commute to employment in the United States, but that such alien who has been out of regular employment in the United States for a continuous period of six months shall be deemed to have lost resident status.

Pursuant to section 210(a)(4) of the Immigration and Nationality Act as amended in 1986, special agricultural workers (SAWs) accorded lawful temporary resident status have "the right to travel abroad (including commutation from a residence abroad) * * *, in the same manner as for aliens lawfully admitted for permanent residence." A significant number of SAWs traditionally migrate to the United States only once a year for a few months. If they were to continue this practice, they would be out of employment in the United States for a continuous period of six months, and would thus, under the previous regulation, lose resident status. Many such workers who would prefer to reside abroad and continue their seasonal migrations for agricultural employment would feel compelled to relocate to the United States to maintain their resident status and would seek year-round employment. Others might choose to abandon their resident status. In either event the purpose of Congress in enacting section 210 to provide for a legal seasonal agricultural workforce would be frustrated. Although aliens granted resident status under section 210 have the right to physically reside in the United States with unrestricted employment authorization, this rule would allow migrants who do not wish to relocate to continue traditional patterns of seasonal migration. It thus conforms with the intent of Congress in section 210 by facilitating the availability of a legal agricultural workforce.

The Service recognizes an apparent contradiction between section 210(a)(4) of the Act and section 210(a)(3) which provides for a termination of temporary resident status only upon a determination that the alien is deportable. By allowing temporary residents SAWs to commute "in the same manner as aliens lawfully admitted for permanent residence", section 210(a)(4) implies that temporary resident status may be lost, as permanent resident status may be lost for failure to meet the minimum employment standard for commuters. To allow a SAW temporary resident to retain that status when a permanent resident would lose his, would place temporary residents within a more lenient regulatory framework than permanent resident aliens. The intent of Congress was not to allow temporary residents the privilege of that status and the right to reside abroad without a connection to the U.S. labor market, but rather to accord them equal treatment with permanent resident aliens. This rule thus conforms with the intent of section 210(a)(4) in according SAWs the same right to travel and commute from abroad as permanent resident aliens.

Section 211.5(d) was removed as it pertains exclusively to special agricultural worker category which, via this amendment, has been adequately addressed in paragraphs (a), (b), and (c).

In accordance with 5 U.S.C. 605(b), the Commissioner of the Immigration and Naturalization Service certifies that this rule does not have a significant adverse economic impact on a substantial number of small entities. This rule is not a major rule within the meaning of section 1(b) of E.O. 12291, nor does this rule have federalism implications warranting the preparation of a Federal Assessment in accordance with E.O. 12612.

The information collection requirements contained in this regulation have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act, and are cited under 8 CFR 299.5.

**List of Subjects in 8 CFR Part 211**

Alien commuters.

The interim rule amending 8 CFR Part 211 which was published at 53 FR 18259 on May 23, 1988, is adopted as a final rule with the following changes.

Accordingly, Chapter I of Title 8 of the Code of Federal Regulations is amended as follows:

## PART 211—DOCUMENTARY REQUIREMENTS: IMMIGRANTS: WAIVERS

1. The authority citation for Part 211 is revised to read as follows:

**Authority:** 8 U.S.C. 1101, 1103, 1181, 1182, 1203, 1225, 1257.

2. Section 211.5(a) and (b) are revised to read as follows:

**§ 211.5 Alien commuters.**

(a) *General.* Notwithstanding any other provisions of this part, an alien lawfully admitted for permanent residence or a special agricultural worker lawfully admitted for temporary residence under section 210 of the Act may commence or continue to reside in foreign contiguous territory and commute as a special immigrant defined in section 101(a)(27)(A) of the Act to his place of employment in the United States. Such commutation may be daily or seasonal for employment which, on the whole, is regular and stable. At the time of each reentry the commuter must present a valid Form I-151, I-551, or I-688 in lieu of an immigrant visa and passport. An alien commuter engaged in seasonal work will be presumed to have taken up residence in the United States if he is present in this country for more than six months, in the aggregate, during any continuous 12-month period. An alien commuter's address report under section 265 of the Act must show his actual residence address even though it is not in the United States.

(b) *Loss of residence status.* An alien commuter who has been out of regular

employment in the United States for a continuous period of six months shall be deemed to have lost his residence status, notwithstanding temporary entries in the interim for other than employment purposes, unless his employment in the United States was interrupted for reasons beyond his control other than lack of a job opportunity or he can demonstrate that he has worked ninety days in the United States in the aggregate during the twelve-month period preceding his application for admission into the United States. Upon loss of status, Form I-151, I-551, or I-688 shall become invalid and shall be surrendered to an immigration officer.

* * * * *

Date: November 16, 1988.

**Richard E. Norton,**

*Associate Commissioner, Examinations, U.S. Immigration and Naturalization Service.*

[FR Doc. 89-4478 Filed 2-24-89; 8:45 am]

BILLING CODE 4410-10-M

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Parts 21 and 25

**[Docket No. NM-33; Special Conditions No. 25-ANM-26]**

## Special Conditions; McDonnell Douglas DC-9-80 and MD-80 Series Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final special conditions.

**SUMMARY:** These special conditions are issued for the McDonnell Douglas Model DC-9-80 and MD-80 series airplanes. These series airplanes will have a novel or unusual design feature associated with the installation of a windshear detection initiated autothrottle activation system, for which the applicable airworthiness regulations do not contain adequate or appropriate safety standards. The design adds a special function to the existing autothrottle requirements. The final special conditions contain the additional safety standards which the Administrator considers necessary, because of the added design feature, to establish a level of safety equivalent to that established by the airworthiness standards of Part 25.

**EFFECTIVE DATE:** February 16, 1989.

**FOR FURTHER INFORMATION CONTACT:** James M. Walker, FAA, Airframe and Propulsion Branch, ANM-112, Transport Airplane Directorate, Aircraft Certification Service, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168, telephone (206) 431-2116.

**SUPPLEMENTARY INFORMATION:**

### Background

On January 29, 1988, the Douglas Aircraft Company, 3855 Lakewood Boulevard, Long Beach, California 90846, applied to the FAA for a change in the type design for the DC-9-80 and MD-80 series airplanes to incorporate a new windshear alert and guidance system (WAGS).

The windshear alert and guidance system installation is designed to assist the flightcrew in the detection, warning, and escape of windshear conditions during the takeoff roll, takeoff, approach, and "go-around" phases of airplane operation. A new windshear computer integrates data from existing on-board airplane sensors with windshear-detection and control-law logic in the computer to provide a windshear annunciation or alert and windshear guidance using the flight director command bars for pitch axis guidance. In addition, the windshear computer provides a command to the digital flight-guidance computer which, in turn, provides engine thrust-control via the autothrottle, thrust rating indicator, and the automatic reserve thrust system (ARTS). The windshear computer is the only new line-replaceable unit which will be incorporated for this system. The remainder of the windshear system, except for some additional warning lights, is composed of components which already exist on the airplane.

The windshear system is designed in accordance with the criteria defined in Advisory Circular (AC) 25-12, Airworthiness Criteria for the Approval of Airborne Windshear Warning Systems in Transport Category Airplanes. That AC states that the system should: (1) Demonstrate adequate reliability; (2) provide annunciation and checkability, which includes indication of failure/fault of the system and sensors and computers, and (3) follow the identified flight profiles for operation to 1,000 feet above ground level (AGL) for the takeoff case, and from 1,000 feet AGL to 50 feet AGL for the approach to landing case (as defined in the AC).

Because the existing requirements of §§ 25.111(c)(4), 25.901, and 25.903 of the FAR do not provide adequate standards for the WAGS, additional airworthiness standards are established to ensure a level of safety equivalent to that established in the regulations. The additional requirements are for the installation of that part of the WAGS which automatically signals the autothrottle to increase engine thrust whenever a windshear condition is detected during takeoff. The system constitutes that portion of the WAGS which, for "reduced thrust" takeoff operations, will unclamp the locked autothrottle, upon a signal from the windshear computer, and command the autothrottle to increase engine thrust to the maximum go-around thrust allowed for the ambient conditions. If the takeoff is initiated at normal takeoff thrust levels and ARTS is armed, the windshear initiated command will increase thrust to the maximum approved installed takeoff thrust by actuation of the ARTS on both engines, without unclamping or moving the autothrottle. The system involved includes those portions of all devices, both mechanical and electrical, that allow the flightcrew to determine the status of the system and that increase the thrust on windshear command.

Under the provisions of § 21.101 of the FAR, an applicant for a change to a type certificate must comply with either the regulations incorporated by reference in the type certificate (i.e., the original type certification basis), or with the applicable regulations in effect on the date of the application for the change. In addition, if the proposed change consists of a new design or a substantially complete redesign of a component, equipment installation, or system installation, and the regulations incorporated by reference do not provide adequate standards with respect to the proposed change, the applicant must comply with regulations in effect on the date of the application for the change, and special conditions established under the provisions of § 21.16, as necessary to provide a level of safety equivalent to that established by the regulations incorporated by reference.

The original type certification basis for the McDonnell Douglas DC-9-80 and MD-80 series airplanes is Part 25 of the FAR effective February 1, 1965, as amended by Amendments 25-1 through 25-40, with certain exceptions and additions which are not pertinent to the subject of these special conditions. These exceptions and additions are identified in the Model DC-9 Type Certificate Data Sheet No. A6WE.

Special conditions, as appropriate, are issued in accordance with § 11.49 of the FAR after public notice, as required by §§ 11.28 and 11.29(b), and become part of the type certification basis in accordance with § 21.17(a)(2).

**Novel or Unusual Design Feature**

The type design of the Model DC-9-80 and Model MD-80 series airplanes, with the WAGS installed, will incorporate a novel or unusual design feature associated with the installation of a windshear detection initiated autothrottle activation system.

The windshear system proposed by McDonnell Douglas would, for a reduced thrust takeoff, provide automatic autothrottle advance to "go-around" thrust on detection of a windshear condition.

Since the original type certification basis does not have adequate or appropriate safety standards for this unique and novel design feature, special conditions are necessary to establish a level of safety equivalent to that established in the regulations.

The FAA considers the automatic advance of the autothrottle on detection of a windshear condition during takeoff to be a special emergency operation which would enhance safety in windshear conditions detected during takeoff.

During takeoff, the only options available to the pilot, once windshear is encountered, are to rapidly advance and set engine thrust and trade aircraft kinetic energy, as necessary, to maintain a positive climb gradient. Normally the optimum strategy is to delay reducing airspeed until at least level flight is no longer possible at the existing pitch attitude and airspeed with maximum rated thrust applied. This procedure saves the available airplane kinetic energy as long as possible in the event the windshear becomes more severe.

Automatic advance of the engine power levers by the autothrottle system to increase thrust would permit the pilot to concentrate on the critical airplane parameters of airspeed and pitch angle. This would be especially essential in reducing the workload in the two-man crew cockpit environment of the DC-9 and MD-80 airplanes. The windshear condition might persist for a relatively long period, and the intensity of this condition would require extensive pilot concentration. With this system (automatic power advancement), the pilot would still retain the option to manually override the autothrottle in the event of either its failure to respond or an inappropriate autothrottle response.

The special conditions proposed would apply only to the takeoff phase of the airplane operation and only to those functions and components that (with an initiated command) would increase engine thrust, using the autothrottle, to the maximum go-around thrust level.

**Discussion of Comments**

Notice of Proposed Special Conditions No. SC-88-7-NM for the McDonnell Douglas DC-9-80 and MD-80 series airplanes was published in the **Federal Register** on September 29, 1988 (53 FR 38020). Five commenters responded to the request for comments. Two concur with the special conditions as proposed, and three submitted the following comments:

One commenter does not agree with either the philosophy or the content of the proposed special conditions. The commenter is extremely reluctant to endorse a system that would usurp the prerogatives of the pilot. According to the commenter, the Windshear Detection System (WDS) could well place the pilot in the untenable position of having a system make a "decision" that, for all practical purposes, would be irreversible, i.e., the decision to continue the takeoff in a windshear condition. The commenter states that in practice the proposed system would sense, then alert, the pilot during the takeoff roll that a windshear is being encountered. The commenter further states that while it is desirable that the alert be received during the headwind portion of the windshear couplet, in a less than perfect world it is likely that the warning would be issued only after the airplane has encountered a strong tailwind condition. It might be extremely dangerous in that situation to continue the takeoff. In any event, the commenter believes that the decision to continue the takeoff should be that of the pilot, and it should not be encumbered with the added problem of an autothrottle system that has just increased power. An example would be when an airplane is taking off on a runway for which the airplane is at maximum runway gross weight and at a speed of 100 Knots Indicated Airspeed (KIAS). If the WDS alerts for a 30-knot tailwind condition, the airplane would, in effect, be attempting a takeoff in a 30-knot tailwind and would not make it. The commenter states the appropriate action for this situation would be to abort the takeoff. The proposed system would increase the power, making it difficult for the pilot to decide whether to continue the takeoff or to effect a successful abort. The commenter is also concerned about the adequacy of the testing and verification of WDS designs now in development. The commenter believes the testing has not been completely objective nor extensive enough to prove the reliability of the systems. The commenter recommends the FAA deny the takeoff-phase automatic throttle-advance part of the proposed special conditions.

The FAA does not agree that this system would usurp the prerogatives of the pilot. Without undue effort, the pilot would always be able to countermand the autothrottle movement. In addition, autothrottle "unclamp" and advance to takeoff-thrust would only occur if the takeoff were initiated at reduced or derated-thrust. Normally, the airplane would already be at takeoff thrust in the example cited, since it would be taking off at maximum runway gross weight, and no autothrottle unclamp and advance would occur. If the ARTS were armed, it would be actuated, but the throttles would remain clamped. Logic has also been added to detect an aborted takeoff. If the throttles were retracted to the low limit switches, windshear-detection would be cancelled; and the autothrottles would clamp.

In response to the commenter's concern about the adequacy of the testing and verification, the FAA considers that the guidance in Advisory Circular (AC) No. 25-12, Airworthiness Criteria for the Approval of Airborne Windshear Warning Systems in Transport Category Airplanes, AC 120-41, Criteria for Operational Approval of Airborne Windshear Alerting and Flight Guidance Systems, the applicable FAR, and these special conditions would provide the airworthiness standards necessary to assure a level of safety equivalent to that provided in the DC-9-80/MD-80 airplane certification standards. The necessary testing and system functional demonstration and analysis will be conducted to certify the system.

The second commenter expresses concern that the proposed windshear-triggered autothrottle system might not be as good as a conventional autothrottle system which is disengaged (clamped) during the critical phase of the takeoff, and that inadvertent thrust reductions might occur with increased frequency.

As noted earlier, the FAA considers the automatic advance of the autothrottles on detection of a windshear condition during "reduced thrust" takeoff operations to be a special emergency situation which warrants an exception to the established policy of having "locked throttles" during the takeoff. As previously stated, the windshear system is being designed in accordance with the criteria defined in AC 25-12, concerning adequate reliability and checkability of the system. The FAA recognizes the possibility of a throttle retard and has included in Special Condition 5d the requirement that the system be designed

to prevent a thrust reduction. This system will have software logic which will be used in the compliance findings for this requirement to ensure a retard does not occur. In addition, with the exception of the windshear actuation, the basic autothrottle system is the same as the previously certified DC-9/MD-80 system, which has given satisfactory service in fleet operation since 1965.

The same commenter notes that if Special Condition 5f is to require a means to indicate the automatic actuation of the power levers, fuel control, or other means used to increase the thrust on all engines, then a clear annunciation of a windshear condition should also be annunciated to the pilot. This commenter states that if this were done, the pilot would be well-informed to take appropriate action.

These special conditions are being developed only for the windshear-triggered autothrottle system. The complete design of the McDonnell Douglas Windshear Alert and Guidance System has both visual and audible warnings for the pilots. The system, when actuated, provides pitch limit signals and annunciations to the Electronic Flight Indicating System (EFIS) and the Heads-up-Display (HUD) and uses the Central Aural Warning System (CAWS) for aural annunciations. The WAGS also interfaces with the ground proximity warning system, and the post stall recovery systems inhibit so that the flightcrew will not receive contradictory system responses during windshear.

The third commenter states that the proposed windshear-triggered autothrottle system should not retard the power levers to takeoff thrust (or go-around thrust) if the pilot has manually advanced the throttles to the maximum stop, i.e., "firewalled" the throttles. The FAA cannot, however, certificate an automatic system to operate to a condition which, in some instances, may overboost the engines. An approved automatic system must be designed to protect the engines from exceeding approved engine operating limits. In addition, for the condition the commenter identifies, when the pilot, at his discretion, manually advances the throttles to maximum stop, he can, within the same maneuver, deactivate the autothrottle, thereby eliminating the possibility of any further throttle retraction.

Under standard practice, the effective date of these final special conditions would be 30 days after publication in the **Federal Register**; however, as the date of type certification of the DC-9-80/MD-80 airplane with the WAGS system installed is intended to be approximately February 15, 1989, the FAA finds that good cause exists to make these special conditions effective upon issuance.

### Conclusion

This action affects only certain unusual or novel design features on McDonnell Douglas DC-9-80 and MD-80 series airplanes. It is not a rule of general applicability and affects only the manufacturer who applied to the FAA for approval of these features on the airplane.

### List of Subjects in 14 CFR Parts 21 and 25

Air transportation, Aircraft, Aviation safety, Safety.

### The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator the following special conditions are issued as part of the type certification basis for the McDonnell Douglas DC-9-80 and MD-80 series airplanes incorporating a windshear triggered autothrottle system.

1. The authority citation for these special conditions is as follows:

**Authority:** 49 U.S.C. 1344, 1348(c), 1352, 1354(a), 1355, 1421 through 1431, 1502, 1651(b)(2), 42 U.S.C. 1857f-10, 4321 et seq.; E.O. 11514; 49 U.S.C. 106(q) (Revised Pub. L. 97-449, January 12, 1983).

2. With that portion of the windshear control system that advances engine thrust functioning normally as designed, all applicable requirements of Part 25, Special Condition 25-88-WE-25 concerning the automatic takeoff thrust control system (ATTCS), and these special conditions must be met with no action by the crew to increase thrust.

3. System Reliability Requirement. When the system is actuated during the takeoff interval between an airspeed of 60 knots and an altitude of 400 feet above ground level (AGL), any reduction in thrust due to a malfunction of the system must be improbable.

4. Thrust Setting/System Operation. There must be no hazardous airplane characteristic or engine response when the system is actuated with any permissible reduced-thrust level, and with any permissible combination of autothrottle and ATTCS operation to increase thrust, under conditions simulating the likely environment.

5. Powerplant Instruments and Controls. In addition to the requirements of §§ 25.1141 and 25.1305, the system must be designed to:

a. Achieve the target thrust without exceeding engine operating limits or airplane $V_{MC}$ considerations and, upon attainment of the target thrust by use of the autothrottle, automatically reclamp.

b. Permit manual decrease or increase in thrust through the use of the power levers.

c. Provide a means to annunciate to the flightcrew, before reaching an airspeed of 60 knots, that the system has failed.

d. Prevent an autothrottle retard action until the airplane has reached an altitude of 400 feet AGL during takeoff, unless the action is pilot initiated.

e. Provide a means for the flightcrew to deactivate the automatic function. This means must be designed to prevent inadvertent deactivation.

f. Provide a means to indicate the automatic actuation of the power levers, fuel control, or any other means used to increase the thrust on all engines.

Issued in Seattle, Washington, on February 16, 1989.

**Leroy A. Keith,**

*Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 89-4441 Filed 2-24-89; 8:45 am]

BILLING CODE 4910-13-M

## FEDERAL TRADE COMMISSION

## 16 CFR Part 13

**[Dkt. C-3240]**

## Batesville Casket Company, Inc.; Prohibited Trade Practices, and Affirmative Corrective Actions

**AGENCY:** Federal Trade Commission.

**ACTION:** Consent order.

**SUMMARY:** In settlement of alleged violations of Federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order prohibits, among other things, a Batesville, Ind. casket company from making future misrepresentations and unsubstantiated claims concerning casket durability and also prohibits false claims that the Commission or any other government agency endorses its products, warranty, or programs.

**DATE:** Complaint and Order issued October 4, 1988.[1]

**FOR FURTHER INFORMATION CONTACT:** Rachel Miller, FTC/H-576, Washington, DC 20580. (202) 326-2463.

**SUPPLEMENTARY INFORMATION:** On Friday, July 29, 1988, there was published in the **Federal Register**, 53 FR 28655, a proposed consent agreement

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H-130, 6th Street & Pennsylvania Avenue NW., Washington, DC 20580.

with analysis In the Matter of Batesville Casket Company, Inc., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered its order to cease and desist in disposition of this proceeding.

The prohibited trade practices and/or corrective actions, as codified under 16 CFR Part 13, are as follows: Subpart—Advertising Falsely Or Misleadingly: § 13.10 Advertising falsely or misleadingly; § 13.85 Government approval, action, connection or standards; § 13.85–30 Federal Trade Commission orders or endorsements; § 13.170 Qualities or properties of product or service; § 13.170–30 Durability or permanence; § 13.170–50 Leakproof or leakproofing; § 13.205 Scientific or other relevant facts. Subpart—Claiming Or Using Endorsements Or Testimonials Falsely Or Misleading: § 13.330 Claiming or using endorsements or testimonials falsely or misleadingly; § 13.330–90 United States Government: § 13.330–90(h) Federal Trade Commission. Subpart—Corrective Actions and/or Requirements: § 13.533 Corrective actions and/or requirements; § 13.533–20 Disclosures; § 13.533–45 Maintain records; § 13.533–45(a) Advertising substantiation; § 13.533–50 Maintain means of communication. Subpart—Misrepresenting Oneself And Goods:—Goods: § 13.1590–20 Federal Trade Commission Act; § 13.1632 Government endorsement or recommendation; § 13.1665 Endorsements; § 13.1710 Qualities or properties; § 13.1740 Scientific or other relevant facts.

**List of Subjects in 16 CFR Part 13**

Caskets, Trade practices.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46, Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

**Donald S. Clark,**

*Secretary.*

[FR Doc. 89–4437 Filed 2–24–89; 8:45 am]

BILLING CODE 6750–01–M

## 16 CFR Part 13

**[Dkt. C–3244]**

## West Point-Pepperell, Inc. et al.; Prohibited Trade Practices, and Affirmative Corrective Actions

**AGENCY:** Federal Trade Commission.

**ACTION:** Consent order.

**SUMMARY:** In settlement of alleged violations of Federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order requires, among other things, West Point-Pepperell to divest certain towel and sheet making facilities to The Bibb Co., an NTC subsidiary, and prohibits West Point from making certain acquisitions in the towel and sheet industries without prior Commission approval.

**DATE:** Complaint and Order issued December 14, 1988.[1]

**FOR FURTHER INFORMATION CONTACT:** Ernest A. Nagata, FTC/S–2105, Washington, DC 20580. (202) 326–2714.

**SUPPLEMENTARY INFORMATION:** On Friday, August 12, 1988, there was published in the **Federal Register**, 53 FR 30436, a proposed consent agreement with analysis In the Matter of West Point-Pepperell, Inc., Magnolia Partners, L.P. and The NTC Group, Inc., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of order.

Comments were filed and considered by the Commission. The Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to divest in disposition of this proceeding.

The prohibited trade practices and/or corrective actions, as codified under 16 CFR Part 13, are as follows: Subpart—Acquiring Corporate Stock Or Assets: § 13.5 Acquiring corporate stock or assets; § 13.5–20 Federal Trade Commission Act. Subpart-Corrective Actions and/or Requirements: § 13.533 Corrective actions and/or requirements; § 13.533–45 Maintain records; § 13.533–45(k) Records, in general; § 13.533–50 Maintain means of communication

**List of Subjects in 16 CFR Part 13**

Sheets, Towels, Trade practices.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; sec. 7, 38 Stat. 731, as amended; 15 U.S.C. 45, 18)

**Donald S. Clark,**

*Secretary.*

[FR Doc. 89–4438 Filed 2–24–89; 8:45 am]

BILLING CODE 6750–01–M

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H–130, 6th Street & Pennsylvania Avenue NW., Washington, DC 20580.

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

### Office of the Secretary

### 24 CFR Part 8

**[Docket No. R–89–528; FR–770]**

## Nondiscrimination Based on Handicap in Federally Assisted Programs and Activities in the Department of Housing and Urban Development; Correction

**AGENCY:** Office of the Secretary, HUD.

**ACTION:** Final rule; correction.

**SUMMARY:** The purpose of this document is to correct a cross-reference contained in the definition for "Individual with handicaps" in 24 CFR 8.3 of the final rule for nondiscrimination based on handicap in programs and activities receiving Federal financial assistance from the Department of Housing and Urban Development, which appeared in the **Federal Register** on June 2, 1988 (53 FR 20216).

**FOR FURTHER INFORMATION CONTACT:** Robert Ardinger, Section 504 Program Manager, Office of Fair Housing and Equal Opportunity, Room 5230, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410, telephone, (202) 755–5404. (This is not a toll-free number.)

**SUPPLEMENTARY INFORMATION:** On June 2, 1988 (53 FR 20216), the Department published a final rule that adopted procedures and policies to assure nondiscrimination based on handicap in programs and activities receiving Federal financial assistance from the Department of Housing and Urban Development. The definition for "Individual with handicap", in 24 CFR 8.3, contained an error in paragraph (d)(3) of that definition and is being corrected by this document.

Accordingly, the following correction is made in FR Doc. 88–12141, published in the **Federal Register** on June 2, 1988 (53 FR 20216), as follows:

**§ 8.3 [Corrected].**

On page 20235, first column, in § 8.3, in paragraph (d)(3), the cross-reference to "(d)(1)" is corrected to read "(a)".

**Authority:** Sec. 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794); sec. 109 of the Housing and Community Development Act of 1974 (42 U.S.C. 5309); sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: February 22, 1989.

Grady J. Norris,

*Assistant General Counsel for Regulations.*

[FR Doc. 89-4481 Filed 2-24-89; 8:45 am]

BILLING CODE 4210-32-M

## VETERANS ADMINISTRATION

### 38 CFR Part 21

### Temporary Program of Vocational Training for Certain New Pension Recipients

**AGENCY:** Veterans Administration.

**ACTION:** Final rule; correction.

**SUMMARY:** The Veterans Administration (VA) is correcting previously published information concerning implementation of provisions of the Veterans' Benefits Improvement Act of 1984.

**EFFECTIVE DATE:** These final rules were retroactively effective February 1, 1985, the date on which the provisions of law on which these regulations are based became effective.

**FOR FURTHER INFORMATION CONTACT:** Donald R. Howell, Acting Chief, Directives Management Division (731), Paperwork Management and Regulations Service, Veterans Administration, 810 Vermont Avenue, NW, Washington, DC (202) 233-4244.

**SUPPLEMENTARY INFORMATION:** In the **Federal Register** of February 16, 1988 (53 FR 4396), the VA published its regulations to provide vocational training and other services to veterans in receipt of VA pension for nonservice-connected disability. In that final regulation the VA inadvertently omitted two words and hereby corrects that error.

**List of Subjects in 38 CFR Part 21**

Civil rights, Claims, Education, Grant programs, Loan programs, Reporting and recordkeeping requirements, Schools, Veterans, Vocational education, Vocational rehabilitation.

Dated: February 21, 1989.

**Donald R. Howell,**

*Acting Chief, Directives Management Division.*

38 CFR Part 21 is amended as set forth below:

### PART 21—[AMENDED]

1. In § 21.6180, paragraph (b)(2) is revised to read as follows:

**§ 21.6180 Case status system.**

* * * * *

(b) * * *

(2) Other incidental references to service-connected disability Chapter 31, "extended evaluation" status, or "independent living" status or other services precluded under § 21.6060(b) of this part, found in § 21.180 to § 21.198 of this part, are not for application to this temporary program.

* * * * *

2. In § 21.6284, the introductory text of paragraph (b) is revised to read as follows:

**§ 21.6284 Reentrance into a training program.**

* * * * *

(b) *Reentrance into rehabilitation to the point of employability during a period of employment services.* A finding of rehabilitation to the point of employability by the VA may be set aside during a period of employment services and an additional period of training and related services provided if any of the conditions in paragraph (a) of this section or one of the following conditions are met and the veteran is otherwise eligible:

* * * * *

[FR Doc. 89-4395 Filed 2-24-89; 8:45 am]

BILLING CODE 8320-01-M

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[FRL-3519-1]**

### Approval and Promulgation of Implementation Plans; State of Maine; Stack Height Reviews

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** EPA is approving a declaration by the State of Maine that revisions to EPA's stack height regulations promulgated on July 8, 1985 (49 FR 44878) do not necessitate revisions to their State Implementation Plan (SIP). The intended effect of this action is to formally document that Maine has satisfied its obligation under section 406 of the Clean Air Act to review potentially effected emission limits under its SIP with respect to EPA's revised stack height regulations.

**EFFECTIVE DATES:** This notice will be effective April 28, 1989, unless notice is received on or before March 29, 1989, that adverse or critical comments will be submitted.

**ADDRESSES:** Comments may be mailed to Louis F. Gitto, Director, Air Management Division, Room 2311, JFK Federal Building, Boston, MA 02203. Copies of the submittal and EPA's evaluation are available for public inspection during normal business hours at the Environmental Protection Agency, Room 2311, JFK Federal Building, Boston, MA 02203; and the Bureau of Air Quality Control, Maine Department of Environmental Protection, Ray Building, Hospital Street, Augusta, ME 04333.

**FOR FURTHER INFORMATION CONTACT:** Susan Kulstad, (617) 565-3225; FTS 835-3225.

**SUPPLEMENTARY INFORMATION:**

**Background**

On February 8, 1982, EPA promulgated final regulations limiting stack height credits and other dispersion techniques (47 FR 5864) as required by section 123 of the Clean Air Act (the Act). These regulations were challenged in the U.S. Court of Appeals for the D.C. Circuit by the Sierra Club Legal Defense Fund, Inc., the Natural Resources Defense Council, Inc., and the Commonwealth of Pennsylvania in *Sierra Club* v. *EPA*, 719 F.2d 436 (D.C. Cir. 1983). On October 11, 1983, the court issued its decision ordering EPA to reconsider portions of the stack height regulations, reversing certain portions, and upholding other portions.

On February 28, 1984, the electric power industry filed a petition for a writ of certiorari with the U.S. Supreme Court. On July 2, 1984 the Supreme Court denied the petition, 104 S. Court 3571 (1984), and on July 18, 1984, the Court of Appeals' mandate was formally issued, implementing the court's decision and requiring EPA to promulgate revisions to the stack height regulations within six months. The promulgation deadline was ultimately extended to June 27, 1985.

Revisions to the stack height regulations were proposed on November 9, 1984 (49 FR 44878) and finalized on July 8, 1985 (50 FR 27892). The revisions redefine a number of specific terms including "excessive concentrations," "dispersion techniques," "nearby," and other important concepts, and modified some of the bases for determining good engineering practice (GEP) stack height.

Pursuant to section 406(d)(2)(B) of the Act the State of Maine was to review all existing emission limitations to determine whether any of these limitations have been affected by stack height credits above GEP or any other dispersion techniques. For any limitations so affected, states were to prepare revised limitations consistent with their revised SIPs. All SIP revisions and revised emission limits were to be submitted to EPA following promulgation of the revised stack height regulations, as required by section 406.

Subsequently, EPA issued detailed guidance on carrying out the necessary reviews. For the review of emission limitations, states were to prepare inventories of stacks greater than 65 meters in height and sources with emissions of sulfur dioxide ($SO_2$) in excess of 5,000 tons per year. These limits correspond to the *de minimis* GEP stack height and the *de minimis* $SO_2$ emissions exemption from prohibited dispersion techniques. These sources were then to be subjected to detailed review for conformance with the revised regulations. State submissions to EPA were to contain an evaluation of each stack and source in the inventory.

### Maine's Submission

EPA has received Maine's review in separate submissions received on September 30, 1988; September 8, 1988; August 6, 1987; October 2, 20, and 24, 1986; May 30, 1986; and December 17, 1985.

Maine has concluded that no existing emission limitations have been affected by stack height credits greater than GEP or any other prohibited dispersion techniques. A summary of Maine's findings is provided below.

Maine has revised its new source review regulations to meet current EPA stack height regulations and, in a separate submission to EPA received on August 22, 1988, Maine formally submitted rule changes to its SIP for consistency with the revised regulations.

### EPA Review

EPA has reviewed Maine's submission and concurs with the conclusion that no SIP revisions to revise emission limitations are necessary as a result of EPA's revised stack height regulations. The state's emission limitations are consistent with the EPA stack height regulations. The new Maine stack height regulations recently submitted to EPA will be addressed elsewhere in a separate rulemaking action. In the interim period until Maine's stack height rules are approved, Maine has assured EPA that it will follow the revised EPA regulations.

Maine reviewed 20 stacks for GEP stack height and 14 sources for prohibited dispersion techniques. The state found no emission limitations affected by stack height credits above GEP or any other dispersion technique.

The stack height rules apply to all new sources and modifications as required in 40 CFR 51.164, as well as existing sources as required in 40 CFR 51.118. This means that these rules apply to all sources that were or are constructed, reconstructed or modified subsequent to December 31, 1970. As mentioned above, Maine's stack height rules will be formally reviewed as part of a future rulemaking on its new source review program. Maine has met its obligations with respect to the review of existing emission limits.

EPA's detailed review and approval of the technical support submitted by Maine is contained in a Technical Support Document which summarizes the state's findings for each inventoried source. This document is available for public inspection at the EPA Regional Office listed in the **ADDRESSES** Section of this notice.

EPA intends to add the documented reviews to Maine's SIP as additional material. This will ensure a clear record of the state's actions and intentions in these matters. Since Maine did not formally revise their SIP as a result of their emissions limitation review, the state has not gone through the public notice and hearing process normally associated with a SIP revision. Thus, prior to this action, there has been no opportunity for public comment on Maine's review and negative declaration. By publishing this approval with a solicitation for public comment, EPA is ensuring the opportunity for public participation in this process.

EPA is approving this SIP revision without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. This action will be effective 60 days from the date of this **Federal Register** notice unless, within 30 days of its publication, notice is received that adverse or critical comments will be submitted. If such notice is received, this action will be withdrawn before the effective date by publishing two subsequent notices. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period. If no such comments are received, the public is advised that this action will be effective on 60 days from today.

### Final Action

EPA is approving a declaration by the State of Maine that revisions to EPA's stack height regulations promulgated on July 8, 1985 do not necessitate SIP revisions for any existing emission limitations in that state.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Under 5 U.S.C. section 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities (see 46 FR 8709).

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 28, 1989. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

### List of Subject in 40 CFR Part 52

Air pollution control, Sulfur dioxide.

Date: February 3, 1989.

**Paul. G. Keough,**

*Acting Regional Administrator.*

Part 52 of Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

## PART 52—[AMENDED]

### Subpart U—Maine

1. The authority citation for Part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401–7642.

2. Section 52.1034 is added to read as follows:

**§ 52.1034 Stack height review.**

The State of Maine has declared to the satisfaction of EPA that no existing emission limitations have been affected by stack height credits greater than good engineering practice or any other prohibited dispersion techniques as defined in EPA's stack height regulations as revised on July 8, 1985. Such declarations were submitted to EPA on December 17, 1985; May 30, 1986; October 2, 20, and 24, 1986; August 6, 1987; September 8 and 30, 1988.

[FR Doc. 89–4452 Filed 2–24–89; 8:45 am]

BILLING CODE 6560–50–M

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## 40 CFR Part 272

**[FRL–3526–8]**

## Final Authorization of State Hazardous Waste Management Program: Missouri

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The Resource Conservation and Recovery Act of 1976, as amended (RCRA), provides for the U.S. Environmental Protection Agency (EPA) to grant authorization to State agencies to operate their hazardous waste management programs in lieu of the Federal program. The State of Missouri has applied for authorization of revisions to its previously authorized

hazardous waste management program under RCRA. EPA has reviewed Missouri's application and has made a decision, subject to public review and comment, that Missouri's hazardous waste management program revision satisfies all of the requirements necessary to qualify for final authorization. Thus, EPA is approving Missouri's hazardous waste management program revisions. Missouri's application for program revision is available for public review and comment.

**DATES:** Final authorization for Missouri shall be effective April 28, 1989, unless EPA publishes a prior **Federal Register** action withdrawing this immediate final rule. All comments on Missouri's program revision application must be received by the close of business March 29, 1989. The incorporation by reference of certain Missouri statutes and regulations was approved by the Director of the **Federal Register** as of April 28, 1989, in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51.

**ADDRESSES:** Copies of Missouri's program revision application are available for inspection and copying during normal business hours at the following addresses: Waste Management Program, Missouri Department of Natural Resources, Jefferson Building, 205 Jefferson Street, Jefferson City, Missouri 65102; U.S. EPA Headquarters Library, PM 211A, 401 M Street SW., Washington, DC 20460 Phone: 202/382-5926; U.S. EPA Region VII, Library, (Ms. Constance McKenzie) 726 Minnesota Avenue, Kansas City, Kansas 66101, 913/236-2828. A copy of the applicable State statutes and regulations is also available at the Office of the Federal Register, 1100 L Street NW., Room 8401, Washington, DC. Written comments should be sent to Daniel J. Wheeler, RCRA Branch, U.S. EPA, 726 Minnesota Avenue, Kansas City, Kansas 66101.

**FOR FURTHER INFORMATION CONTACT:** Daniel J. Wheeler, U.S. EPA, 726 Minnesota Avenue, Kansas City, Kansas 66101; 913-236-2852, (FTS) 757-2852.

**SUPPLEMENTARY INFORMATION:**

## A. Background

*Authorization Process*

Section 3006 of RCRA, 42 U.S.C. 6926 *et. seq.*, allows EPA to authorize State hazardous waste management programs to operate in the states in lieu of the Federal hazardous waste program. This is done when a state submits to EPA a request for authorization demonstrating that the state program is equivalent to the Federal program.

In addition, as an interim measure, the Hazardous and Solid Waste Amendments of 1984 (Pub. L. 98-616, November 8, 1984, hereinafter referred to as "HSWA") allows States to revise their programs to become substantially equivalent instead of equivalent to RCRA requirements promulgated under HSWA authority. States exercising the latter option receive "interim authorization" for the HSWA requirements under section 3006(g) of RCRA, 42 U.S.C. 6926(g), and later apply for final authorization for the HSWA requirements.

Revisions to State hazardous waste programs are necessary whenever Federal or State statutory or regulatory authority is modified or when certain other changes occur. This is because states with final Authorizations under section 3006(b) of RCRA have continuing obligations to maintain state programs that are equivalent to, consistent with, and no less stringent than the Federal hazardous waste management program. Most commonly, State program revisions are necessitated by changes to EPA's regulations in 40 CFR Parts 260-266 and 124 and 270 that require corresponding changes in the state program in order for the state to maintain its authorization.

*Codification Process*

EPA codifies its approval of State programs in Part 272 of Title 40, Code of Federal Regulations (CFR) and incorporates by reference in Part 272 the State statutes and regulations that EPA will enforce under section 3008, 3013 and 7003 of RCRA. The purpose of codification is to provide clear notice to the public of the scope of the *authorized* program in each State. Such notice is particularly important in view of the HSWA amendments and the changes in authorized State programs required to reflect these new Federal requirements. By codifying authorized State programs and by amending the Code of Federal Regulations whenever a new or different set of requirements is authorized, the status of federally approved requirements in each State will be readily discernible. Thus, EPA is today codifying the Missouri authorized program in 40 Part 272. (See 50 FR 28702, July 15, 1985, for a full discussion of the codification process.)

The Agency will only codify for enforcement purposes those provisions of the Missouri hazardous waste management program for which authorization approval has been granted by EPA. Concerning HSWA, some State requirements may be similar to HSWA requirements that are in effect under Federal statutory authority in that State. However, a State's HSWA-type requirements are not authorized and will not be codified into the CFR until the Regional Administrator publishes his final decision to authorize the State for specific HSWA requirements. Until such time, EPA will enforce the HSWA requirements and not the State analogs.

## B. Missouri

On November 20, 1985, EPA published a **Federal Register** notice announcing its decision to grant final authorization for the RCRA base program to the State of Missouri. (See 50 FR 47740.)

As noted above, a State with final authorization has a continuing obligation to maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal hazardous waste program. To meet this obligation, Missouri has submitted a request for additional program approvals. The initial request was submitted June 27, 1986. Based on EPA comments on that submission, the State submitted a revised and expanded request on December 1, 1987. The State is seeking approval of its program revision in accordance with 40 CFR 271.21(b)(3).

EPA has reviewed Missouri's application, and determined that Missouri's hazardous waste program revision satisfies all of the requirements necessary to qualify for final authorization. Consequently, EPA is granting final authorization for the additional program modifications to Missouri. Today's decison is being published as an "immediate final" rule in accordance with the provisions of 40 CFR 271.21(b)(3). The public may submit written comments on this immediate final decision until the date noted in the "Dates" section of this document. Approval of Missouri's program revision shall become effective 60 days from today unless an adverse comment pertaining to the State's revision discussed in this notice is received by the end of the comment period. If an adverse comment is received EPA will publich either (1) a withdrawal of the immediate final decision or (2) a notice containing a response to comments which either affirms that the immediate final decision takes effect or reverses the decision.

Missouri has adopted by reference all of the required Federal Regulations through July 1, 1986, as State requirements, plus one revision after that date. There are some areas in which the State has adopted Federal requirements but is not requesting authorization for those requirements at this time. Also, the State has adopted

some provisions which, being broader in scope than the Federal requirements, are not included in the Federally enforceable State rules being approved today.

The State has adopted and applied for authorization of the program provisions listed below. For a fulll discussion of each of the provisions, the reader is referred to **Federal Register** promulgation of that provision. The provisions are: Exclusion of Household Waste (November 13, 1984, 49 FR 44980), Interim Status Standards—Applicability (November 21, 1984, 49 FR 46095), Corrections to Test Methods Manual (December 4, 1984, 49 FR 47391), Satellite Accumulation (December 20, 1984, 49 FR 49571), Redefinition of Solid Waste (January 4, 1985, 50 FR 614), Interim Status Standards for Landfills (April 23, 1985) 50 FR 16044) State Availability of Information (see HSWA section 3006(f)), Closure, Post-Closure and Financial Responsibility Requirements (May 2, 1986, 51 FR 16422), Listing of Spent Pickle Liquor (May 28, 1986, 51 FR 19320) and Liability Coverage-Corporate Guanantee (July 11, 1986, 51 FR 25350).

Availability of Information provisions where the subject of a compliance schedule published March 11, 1987 (52 FR 7412) allowing the State until June 30, 1987, for adoption, with an expectation that the State would submit an authorization request for it by September 30, 1987. The State met this schedule.

In addition to the ten non-HSWA provisions, the State has adopted and requested authorization for several HSWA provisions. The State has adopted the listings of the hazardous wastes dioxin (January 14, 1985, 50 FR 1978), toluene (October 23, 1985, 50 FR 42936), ethylene dibromide (February 13, 1986, 51 FR 5330) and spent solvents (February 25, 1986, 51 FR 6541) as routine parts of the ongoing waste management program. The State will also require the use of the paint filter test (April 30, 1985, 50 FR 18370), as corrected (May 28, 1986, 51 FR 19176).

The application for the additional waste listings will not significantly impact the State's workload. The paint filter test is a requirement on the regulated community and will not impact the State's workload. The management standards for dioxin wastes are extensive and generally considered quite burdensome for a State program. However, the Missouri Department of Natural Resources has been deeply involved in the management of dioxin wastes in several parts of the State for many years. It is felt that reorganizing the State requirements along the lines of the EPA requirements will be more efficient for the State and for the regulated community and will not result in an increased burden on the State. In summary, EPA has reviewed the State program in light of current and proposed activities and has determined that authorizing these new provisions will not have profound effect on the ability of the State to carry out the program.

There are some additional provisions which the State has adopted which are broader in scope than Federal requirements. EPA is not approving these provisions and they will not become Federally enforceable. These provisions are identified in the regulatory text of this document.

The State will assume lead responsibility for issuing permits for those program areas authorized today. For those HSWA provisions for which the State is not authorized, EPA will retain lead responsibility. For those permits which will now change to State lead from EPA, EPA will transfer copies of any pending applications, completed permits or pertinent file information to the State within thirty days. EPA will be responsible for enforcing the terms and conditions of Federally issued permits while they remain in force. EPA will also be responsible for enforcing the terms and conditons of RCRA permtis regarding HWSW provisions that the State does not have the authority to address. The State has agreed to review all State issued permits and to modify or reissue them as necessary to require compliance with the currently approved State law and regulations. When the State reissues Federally issued permits as State permits, EPA will rely on the State to enforce them, with the exception of those HSWA provisions not yet authorized.

### C. Decision

I conclude that Missouri's application for program revisions meets all of the statutory and regulatory requirements established by RCRA. Accordingly, Missouri is granted final authorization to operate its hazardous waste management program, as revised. Missouri now has responsibility for the permitting of treatment, storage and disposal facilities within its borders and carrying out other aspects of the RCRA program, subject to the limitation of its revised program application and previously approved authorities. Missouri also has primary enforcement responsibilities, although EPA retains the right to conduct inspections under sections 3007, 3013, and 7003 of RCRA.

### D. Missouri Codification

As noted above, EPA is codifying for enforcement purposes those provisions of the Missouri hazardous waste management program for which authorization approval has been granted by EPA.

To codify Missouri's authorized hazardous waste program, EPA is adding Subpart AA to Part 272 of Title 40 of the CFR. Subpart AA has previously been reserved for Missouri. In § 272.1301(a), EPA is codifying for enforcement purposes the State statutes and regulations. Similarly, the Memorandum of Agreement, the Attorney General's Statement and the Program Description are made part of the hazardous waste management program under Subtitle C of RCRA by codifying them in § 272.1301 (b), (c) and (d).

The Agency retains the authority under sections 3008, 3013 and 7003 of RCRA to undertake enforcement actions in authorized States. With respect to such an enforcement action, the Agency will rely on Federal sanctions, Federal inspection authorities and the Federal Administrative Procedure Act rather than the State authorized analogs to these requirements. Therefore, the Agency does not intend to codify *for purposes of enforcement* such particular, authorized Missouri enforcement authorities. Section 272.1301(a), Column (3) identifies those Missouri authorities that are part of the authorized program but are not codified.

The public also needs to be aware that some provisions of the State's hazardous waste management program are not part of the Federally authorized State program. These non-authorized provisions are not part of the RCRA Subtitle C program because they are "broader in scope" than RCRA Subtitle C. (See 40 CFR 271.1(i).) As a result, State provisions which are "broader in scope" than the Federal program are not codified for purposes of enforcement in Part 272. Section 272.1301(a), Column (4), of the codified text identifies for reference and clarify the statutory and regulatory provisions which are "broader in scope" than the Federal program and which are therefore not part of the authorized program being codified. "Broader in scope" provisions will not be enforced by EPA; the State, however, will continue to enforce such provisions.

### E. HSWA Provisions

As noted above, the Agency is not amending Part 272 to include many HSWA requirements and prohibitions

that are immediately effective in all States. Section 3006(g) of RCRA provides that any requirement or prohibition of HSWA (including implementing regulations) takes effect in authorized States at the same time that it takes effect in non-authorized States. Thus, EPA has immediate authority to implement a HSWA requirement or prohibition once it is effective. A HSWA requirement or prohibition supersedes any less stringent or inconsistent State provision which may have been previously authorized by EPA. (See 50 FR 28702, July 15, 1985.) Because of the vast number of HSWA statutory and regulatory requirements taking effect over the next few years, EPA expects that many previously authorized and codified State provisions will be affected. The States are required to revise their programs to adopt the HSWA requirements and prohibitions by the deadlines set forth in 40 CFR 271.21, and then to seek authorization for those revisions pursuant to Part 271. EPA expects that the States will be modifying their programs substantially and repeatedly. Instead of amending the Part 272 codification every time a new HSWA provision takes effect under the authority of RCRA section 3006(g), EPA will wait until the State receives authorization for its analog to the new HSWA provision before amending the State's Part 272 codification. In the interim, persons wanting to know whether a HSWA requirement or prohibition is in effect should refer to 40 CFR 271.1(j), as amended, which lists each such provision.

The codification of State authorized programs in the CFR should substantially enhance the public's ability to discern the current status of the authorized State program and clarify the extent of Federal enforcement authority. This will be particularly true as more State program revisions to adopt HSWA provisions are authorized.

### Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 4 U.S.C. 605(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities. This authorization effectively suspends the applicability of certain Federal regulations in favor of Missouri's program, thereby eliminating duplicative requirements for handlers of hazardous waste in the State. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

### Compliance With Executive Order 12291

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

### List of Subjects in 40 CFR Part 272

Administrative practice and procedure, Confidential business information, Hazardous waste transportation, Hazardous waste, Incorporation by reference, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements.

**Morris Kay,**

*Regional Administrator.*

For the reasons set forth in the preamble, 40 CFR Part 272 is amended as follows:

## PART 272—APPROVED STATE HAZARDOUS WASTE MANAGEMENT PROGRAMS

1. The authority for Part 272 continues to read as follows:

**Authority:** Secs. 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as amended, 42 U.S.C. 6912(a), 6926, and 6974(b).

2. In the table of contents for Part 272, the entry for Subpart AA is revised to read as follows:

* * * * *

**Subpart AA—Missouri**

Sec.



* * * * *

3. 40 CFR Part 272, Subpart AA is amended by adding §§ 272.1300 and 272.1301 to read as follows:

### § 272.1300 State authorization.

(a) The State of Missouri is authorized to administer and enforce a hazardous waste management program in lieu of the Federal program under Subtitle C of the Resource Conservation and Recovery Act of 1976 (RCRA), 42 U.S.C. 6921 *et seq.*, subject to the Hazardous and Solid Waste Amendments of 1984 (HSWA), (Pub. L. 98–616, Nov. 8, 1984), 42 U.S.C. 6926 (c) and (g)). The Federal program for which a State may receive authorization is defined in 40 CFR Part 271. The State's program, as administered by the Missouri Department of Natural Resources was approved by EPA pursuant to 42 U.S.C. 6926(b) and Part 271 of this Chapter. EPA's approval was effective on December 4, 1985 (50 FR 47740, November 20, 1985).

(b) Missouri is not authorized to implement any HSWA requirements in lieu of EPA unless EPA has explicitly indicated its intent to allow such action in a **Federal Register** notice granting Missouri authorization.

(c) Missouri has primary responsibility for enforcing its hazardous waste program. However, EPA retains the authority to exercise its enforcement authorities under sections 3007, 3008, 3013, and 7003 of RCRA, 42 U.S.C. 6927, 6928, 6934, and 6973, as well as under other Federal laws and regulations.

(d) Missouri must revise its approved program to adopt new changes to the Federal Subtitle C program in accordance with section 3006(b) of RCRA and 40 CFR Part 271, Subpart A. Missouri must seek final authorization for all program revisions pursuant to section 3006(b) of RCRA, but, on a temporary basis, may seek interim authorization for revisions required by HSWA pursuant to section 3006(g) of RCRA, 42 U.S.C. 6926(g). If Missouri obtains final authorization for the revised requirements pursuant to section 3006(g), the newly authorized provisions will be listed in § 272.1301 of this subpart. If Missouri obtains interim authorization for the revised requirements pursuant to section 3006(g), the newly authorized provision will be listed in § 227.1302.

### § 272.1301 State-administered program; Final authorization.

Pursuant to section 3006(b) of RCRA, 42 U.S.C. 6926(b) Missouri has final authorization for the following elements as submitted to EPA in Missouri's program application for final authorization which was approved on November 20, 1985. Missouri submitted a program revision application on December 1, 1987, which was approved by EPA on February 27, 1989. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies may be obtained from the Waste Management Program, Missouri Department of Natural Resources, P.O. Box 176, Jefferson City, Missouri 65102. Copies may be inspected at: U.S. EPA Headquarters Library, PM 211A, 401 M Street, SW., Washington, DC 20460. Phone: 202/382–5926; U.S. EPA Region VII, Library, (Ms. Constance McKenzie) 726 Minnesota Avenue, Kansas City, Kansas 66101, 913/236–2828 and at the Office of the Federal Register, 1100 L Street NW., Room 8401, Washington, DC.

(a) *State statutes and regulations.* The requirements in the Missouri statutes and regulations cited in this paragraph are incorporated by reference and codified as part of the hazardous waste management program under Subtitle C of RCRA, 42 U.S.C. 6921 *et seq.* The specific provisions are reference in Column 1 and refer to Chapters 260 and 610 of the Revised Statutes of Missouri (1986) and to Title 10, Division 25, Chapters 3 through 8 of the Missouri Code of State Regulations (as effective on August 1, 1987). Provisions which are approved and incorporated by reference are noted in Column 2. Those provisions which duplicate EPA procedural requirements are approved as parts of the official State program but are not needed for enforcement purposes and are not incorporated by reference. They are noted in Column 3. Those provisions which are not approved because they are broader in scope than the Federal program are noted in Column 4.

| Section of law or regulation (1) | Incorporated by reference (2) | Approved but not codified (3) | Not approved (4) |
|---|---|---|---|
| **STATUTORY PROVISIONS** | | | |
| 260.350 to 260.360(11) | X | | |
| 260.360(12) | | | X |
| 260.360(13) to 260.360(18) | X | | |
| 260.365 to 260.377 | | X | |
| 260.378 | | | X |
| 260.360–1. to 260.380–1.(9) | X | | |
| 260.380–1.(10) | | | X |
| 260.380–2. to 260.385 (unnumbered first paragraph) | X | | |
| 260.385(1) | | | X |
| 260.385(2) to 260.390(7) | X | | |
| 260.390(8) | | | X |
| 260.390(9) | X | | |
| 260.391 to 260.395–5 | | | X |
| 260.395–6. to 260.395–7.(4) | X | | |
| 260.395–7.(5) to 260.395–7.(6) | | | X |
| 260.395–7.(7) to 260.395–18 | X | | |
| 260.396 | | | X |
| 260.400 | | X | |
| 260.405 | | | X |
| 260.410 to 260.420 | | X | |
| 260.423 to 260.424 | | | X |
| 260.425 to 260.430 | | X | |
| 610.010 to 610.028 | | X | |
| **REGULATORY PROVISIONS** | | | |
| 3.260 to 3.260(1)(A)19 | X | | |
| 3.260(1)(A)20 | | | X |
| 3.260(1)(A)21. to 3.260(1)(A)22 | X | | |
| 3.260(1)(B) | | | X |
| 3.260(1)(C) to 3.260(1)(D) | | X | |
| 3.260(2) | X | | |
| 4.261 to 4.261(2)(A)4 | X | | |
| 4.261(2)(A)5. to 4.261(2)(D)2 | | | X |
| 4.261(2)(D)3 | X | | |
| 5.262 to 5.262(2)(B)1 | X | | |
| 5.262(2)(B)2 | | X | |
| 5.262(2)(B)3. to 5.262(2)(F) | X | | |
| 5.262(2)(G) | | | X |
| 6.263 to 6.263(2)(A)2 | X | | |
| 6.263(2)(A)3. to 6.262(2)(A)4 | | | X |
| 6.263(2)(A)5. to 2.263(2)(D) | X | | |
| 7.264 to 7.264(2)(O)3 | X | | |
| 7.264(2)(P) | | | X |
| 7.264(2)(Q) | X | | |
| 7.265 | X | | |
| 7.266 to 7.266(2)(D) | X | | |
| 7.266(2)(D)1 | | | X |
| 7.266(2)(D)2 | X | | |
| 7.266(2)(E) to 7.266(2)(G) | | | X |
| 7.270 to 7.270(2)(B)6 | X | | |
| 7.270(2)(B)7. to 7.270(2)(B)8 | | | X |
| 7.270(2)(B)9. to 7.270(2)(B)13 | X | | |
| 7.270(2)(B)14 | | | X |
| 7.270(2)(C) to 7.270(2)(C)1.A. (The un-numbered first sentence before the phrase noted below) | X | | |
| In 7.270(2)(C)1.A., the phrase " * * * upon payment of a fee * * * the first year." | | | X |
| 7.270(2)(C)1.A. (The un-numbered second sentence) to 2.270.(2)(C)1.C | X | | |
| 7.270(2)(C)1.D | | X | |
| 7.270(2)(C)2. to 270(2)(C)2.E | X | | |
| 7.270(2)(C)2.F | | | X |
| 7.270(2)(D) to 7.270(2)(G) | X | | |
| 8.010 | | X | |

(b) *Memorandum of Agreement.* The Memorandum of Agreement between EPA Region VII and the Missouri Department of Natural Resources, signed by the EPA Regional Administrator on August 30, 1988, is codified as part of the authorized hazardous waste management program under Subtitle C of RCRA, 42 U.S.C. 6921 *et seq.*

(c) *Statement of Legal Authority.* (1) "Attorney General's Statement for Final Authorization," signed by the Attorney General of Missouri on June 27, 1985, is codified as part of the authorized hazardous waste management program under Subtitle C of RCRA, 42 U.S.C. 6921 *et seq.*

(2) "Attorney General's Statement for Final Authorization of Changes to the Federal RCRA Program," signed by the delegated Assistant Attorney General of Missouri on December 1, 1987, is codified as part of the authorized hazardous waste management program under Subtitle C of RCRA, 42 U.S.C. 6921 *et seq.*

(d) *Program Description.* The Program Description and any other materials submitted as part of the original application or as supplements thereto are codified as part of the authorized hazardous waste management program under Subtitle C of RCRA, 42 U.S.C. 6921 *et seq.*

[FR Doc. 89-4302 Filed 2-24-89; 8:45 am]

BILLING CODE 6560-50-M

## DEPARTMENT OF THE INTERIOR

### Office of the Secretary

### 43 CFR Part 20

### Employee Responsibilities and Conduct

February 7, 1989.

**AGENCY:** Office of the Secretary, Interior.

**ACTION:** Notice of availability of Appendix C.

**SUMMARY:** This notice announces the availability of Appendix C to 43 CFR Part 20. This Appendix lists positions within the Department of the Interior for which Confidential Statements of Employment and Financial Interests (DI-212) are required to be filed. This Appendix has been updated as of December 1, 1988 and has been printed as an agency document. This Appendix will not be published in the **Federal Register** but will be available to the public upon request.

**EFFECTIVE DATE:** December 1, 1988.

**ADDRESS:** Copies of Appendix C may be obtained from the Deputy Ethics Counselor for each bureau or office within the Department of the Interior. You may address your requests to the Deputy Ethics Counselor (insert the name of the specific bureau or office), 18th & C Streets NW., Washington, DC 20240.

**FOR FURTHER INFORMATION CONTACT:** Mr. Gabriele J. Paone or Mr. Mason Tsai, Departmental Ethics and Audit Coordination Staff, U.S. Department of the Interior, Washington, DC 20240, (202) 343-5916 or 343-3932.

**SUPPLEMENTARY INFORMATION:** The Department of the Interior has received approval from the Office of Government Ethics, Office of Personnel Management, to publish Appendix C to 43 CFR Part 20 as an agency document. The availability of this document is hereby announced in the **Federal Register.** The initial notice of this annual process was provided with the publication of 43 CFR Part 20 as a proposed rule on October 6, 1980 (45 FR 66370). This arrangement meets administrative requirements which affect only Department of the Interior employees and at the same time defrays the cost of publishing the Appendix C listing in the **Federal Register.** Copies of Appendix C may be obtained from the ethics officials of each respective agency.

Appendix C lists Department of the Interior positions, in addition to GS (or GM)-15's for which a Confidential Statement of Employment and Financial Interests (Form DI-212) is required to be filed by Executive Order 11222 (as amended). Positions identified in Appendix C are effective for the February 1, 1989 filing deadline. Appendix C has been approved by the Office of Personnel Management.

### Lists of Subjects in 43 CFR Part 20

Conflicts of interest, Government employees.

**Authorities:** Appendix C to Part 20 of Title 43 of the Code of Federal Regulations is published under Executive Order 11222 (as amended). 30 FR 6459, 3 CFR, 1964-65 Comp., as amended (18 U.S.C. 201 Note); 5 CFR 735.104; and 5 U.S.C. 301.

Appendix C was compiled by Bureau and Office Ethics Counselors and consolidated by Deborah Williams of the Departmental Ethics and Audit Coordination Staff.

Dated: February 7, 1989.

**Charles E. Kay,**

*Principal Deputy Assistant Secretary, Policy, Budget and Administration.*

[FR Doc. 89-4399 Filed 2-24-89; 8:45 am]

BILLING CODE 4310-PK-M

## DEPARTMENT OF TRANSPORTATION

### Maritime Administration

### 46 CFR Part 221

**[Docket No. R-125]**

**RIN 2133-AA79**

### Regulated Transactions Involving Documented Vessels and Other Maritime Interests; Correction

**AGENCY:** Maritime Administration, DOT.

**ACTION:** Notice of correction in interim final rule.

**SUMMARY:** The Maritime Administration ("MARAD") is issuing this notice to correct a part of the interim final rule which appeared in the **Federal Register** on Thursday, February 2, 1989 (54 FR 5382).

**FOR FURTHER INFORMATION CONTACT:** Robert J. Patton, Jr., Deputy Chief Counsel, Maritime Administration, Washington, D.C. 20590, tel. (202) 366-5711.

**SUPPLEMENTARY INFORMATION:** The revised 46 CFR Part 221 which was published as an interim final rule implements significant changes in the law effected by section 102 of Pub. L. 100-710, which amended and codified the former Ship Mortgage Act, 1920. Part 221 is intended to reflect MARAD's regulatory responsibilities with respect to transactions involving citizen-owned documented vessels. A significant element of the new regulatory scheme is the grant by MARAD, in § 221.17(a), of general administrative approval for transactions involving certain categories of vessels and, in § 221.17(c), of certain charters of documented vessels. While the discussion of the rulemaking clearly stated that "Any noncitizen acquiring a vessel, or an interest in or control of a vessel pursuant to this section [221.17] would, perforce, be precluded from using that vessel in the coastwise trade." (54 FR 5384), the text of § 221.17 as published did not contain such an explicit prohibition. In addition, preexisting policy regarding transfer to foreign registry or operation under the authority of a foreign country of documented vessels of under 200 gross tons was inadvertently omitted. Accordingly, § 221.17 is revised to read as follows:

**§221.17. General approval.**

(a) *All transactions.* Except when the transferee of a vessel or an interest in or control of a vessel is a corporation holding a Certificate of Compliance issued under 46 App. U.S.C. 883-1, and

except as provided in paragraph (c) of this section, the Maritime Administrator grants prior approval for each of the transactions described in § 221.11(a)(1) of this part for the following documented vessel types:

(1) A self-propelled vessel under 1,000 gross tons;

(2) A vessel operating on inland lakes or waters from which there is no navigable exit; and

(3) A non-self-propelled vessel under 1,000 tons, excluding LASH and SEABEE type barges.

(b) *Mortgages.* The Maritime Administrator grants general approval for the following mortgages of documented vessels to noncitizens:

(1) A mortgage to a noncitizen federally insured depository institution that has complied with the requirements of § 221.45(a) of this part; and

(2) A mortgage to any noncitizen of a vessel specified in § 221.17(a) of this part.

(c) *Charters.* The Maritime Administrator approves, subject to the conditions specified below, charters of documented vessels by citizens of the United States to noncitizens, not to exceed six months. An information copy of each such charter shall be submitted to the Maritime Administrator not later than thirty days following the execution thereof. The respective dates for commencement and termination of a charter, as set forth in its provisions, shall be accepted as *prima facie* evidence of the dates of the events. The Maritime Administrator shall consider the charter period to include any extension period, irrespective of the inclusion of a provision in the agreement that either makes any charter period extension beyond six (6) months subject to the approval of the Maritime Administrator or permits the substitution of another vessel, including other than a documented vessel. For such a charter, the vessel owner shall submit the charter party to the Maritime Administrator for approval prior to the commencement date of the first six (6) month period. Any new charter of a vessel to a noncitizen that is executed within thirty (30) days after the date of any charter approved under this paragraph with the same noncitizen charterer, shall be considered to be a renewal or extension of the original charter. If the cumulative period of time of the charters exceeds six (6) months, the new charter shall be submitted for approval. This requirement shall apply notwithstanding any provision in a new charter that permits the substitution of another vessel, including other than a documented vessel. This approval excludes and does not apply to the following charters:

(1) Demise or bareboat charters for operation in the coastwise trade;

(2) Charters to a noncitizen providing for a duration that is or may be for a period in excess of six (6) months, other than the charter of vessel types described in paragraph (a) of this section.

(3) Charters for the carriage of cargoes of any kind to or from the USSR (except as provided in paragraph (d) of this section), Latvia, Lithuania, Estonia, Libya, Iran, Czechoslovakia, Bulgaria, Albania, North Korea, German Democratic Republic including East Berlin), Laos, Kampuchea, Vietnam, Outer Mongolia, Manchuria or Cuba;[1] and

(d) *Charters for trade with the USSR.* The Maritime Administrator hereby approves charters to noncitizens of documented bulk cargo vessels engaged in carrying bulk raw and processed agricultural commodities from the United States to ports in the USSR, or to other permissible ports of discharge for transshipment to the USSR, pursuant to an operating-differential subsidy agreement that is consistent with the requirements of Parts 252 and 294 of this chapter.

(e) *Transfer to foreign registry or operation under the authority of a foreign country.* The Maritime Administrator grants prior approval for the transactions described in § 221.11(a)(2) of this part for documented vessels of under 200 gross tons. This approval shall not apply if the vessel is to be placed under the registry of or operated under the authority of any country listed in paragraph (c)(2) of this section.

Dated: February 22, 1989.

**Doris Lansberry,**

*Assistant Secretary, Maritime Administration.*

[FR Doc. 89-4424 Filed 2-24-89; 8:45 am]

BILLING CODE 4910-81-M

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 69

**[CC Docket 87-113; FCC 87-271]**

### Access Charges and Jurisdictional Separations Procedures

**AGENCY:** Federal Communications Commission.

[1] This list of countries is subject to change from time to time. Information concerning current restrictions may be obtained from the official identified in § 221.7 of this part.

**ACTION:** Report and order (Final rule; correction).

**SUMMARY:** This is an amendment to Part 69 of the CFR. Certain language was inadvertently omitted from § 69.603 of the Commission's Rules, 52 FR 37308, 37314, released October 6, 1987.

**EFFECTIVE DATE:** January 1, 1988.

**ADDRESS:** Federal Communications Commission, Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Michael Wilson or Charles Needy, Audits Branch, Accounting and Audits Division, Common Carrier Bureau, (202) 632-7500.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's *Report and Order,* CC Docket No. 87-113, adopted August 14, 1987 and released August 18, 1987.

The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

**Summary of Report and Order**

1. On May 1, 1987, the Commission released a *Notice of Proposed Rulemaking (Notice),* CC Docket No. 87-113, FCC 87-271, seeking comment on proposed amendments to Part 69 of its Rules. The Commission stated that its primary objective was to conform these Access Charge Rules to the recently revised jurisdictional separations rules. Accordingly, it proposed numerous conformance changes that, with only two exceptions, related to the apportionment of costs among the existing access cost elements. The two exceptions were a proposal to eliminate the Local Switching subelments and a proposal to consolidate the Line Termination, Local Switching and Intercept cost elements into a single cost element called Switching. In addition to proposing conformance changes, the Commission also proposed several minor changes to enhance its ability to review annual access tariff filings. Specifically, the *Notice* included a proposal to limit the annual October filings to rate level changes and it discouraged filings during the three-month period following the October filings. Finally, the Commission encouraged interested parties to provide data identifying any revenue requirement shifts expected to result

from implementation of the proposed revisions.

2. The majority of the parties commenting in this proceeding were supportive of the proposed revisions on the whole. Moreover, based on its analysis of test data submitted by twelve parties, the Commission determined that the proposed revisions would result in only minimal industry revenue requirement shifts among the access costs elements. Consequently, on August 14, 1987, the Commission adopted, with modifications and minor corrections, all but one of its proposed amendments to the Access Charge Rules. The rejected amendment was the proposal to assign all interstate Marketing Expense to the interexchange cost category. The Commission decided that, in view of its decision in a separate proceeding to revise the jurisdictional separations procedures for Marketing Expense, it would retain the current Part 69 procedures for apportioning this expense to maintain consistency between these two procedures.

3. Further, the Commission substantially modified three of the proposed revisions before adopting them. One of these was the proposal to allocate service observation board equipment on the basis of the remaining combined investment in Central Office Equipment (COE) Category 2 and Category 3. The Commission decided that this apportionment basis should include COE Category 1 as well as COE Category 2 and Category 3 to maintain consistency between Part 69 and Part 36 of its Rules. Another modified revision was the proposal to allocate the interstate expenses in Accounts 6210, 6220 and 6230 on the basis of the associated COE investment. The Commission found that, by changing this basis to "total COE investment," the allocation procedure would not only be more consistent with the Part 36 procedure but would also result in a significant reduction of the industry revenue requirement shift between the Switching and Special Access elements. Finally, the proposal to allocate Telephone Operator Services Expense on the basis of the relative number weighted standard work seconds was substantially changed. Because some carriers purchase such services and therefore do not know the relative number of weighted standard work seconds, the Commission modified this proposal to allow such carriers to directly assign contracted operation services to the appropriate cost element.

4. The Commission rejected the suggestion of six commenting parties that different apportionment rules be prescribed for Class A and Class B carriers. It acknowledged that, under its adopted revisions to Part 69, some shifts in revenue requirements will occur among the access cost elements for individual companies and for the industry as a whole. The Commission concluded, however, that these shifts will not be large enough for the Class B carriers as a group to merit the increased administrative costs that would result from the inconsistent treatment of Class A and Class B carriers. It further concluded that these shifts will not be large enough to produce adverse consequences. Finally, the Commission decided to make the revisions effective on January 1, 1988, to coincide with the effective date of the revised jurisdictional separations rules and the revised accounting rules.

### Order Clause

5. Accordingly, it is ordered, That the amendments to Part 69 contained in Appendix B of this Report and Order are adopted effective January 1, 1988. This action is taken pursuant to sections 1, (4(i) and (j), 205, 221(c), 403, and 410 of the Communications Act, as amended, 47 U.S.C. Sections 151, 154(i) and (j), 205, 221(c), 403 and 410.

### List of Subjects in 47 CFR Part 69

Access charge rules, Communications common carriers, Telephone, Uniform system of accounts.

Federal Communications Commission.

**Donna R. Searcy,**

*Secretary.*

## PART 69—[AMENDED]

1. The authority citation for Part 69 continues to read as follows:

**Authority:** Secs. 4, 201, 202, 203, 205, 218, 403; 48 Stat. 1066, 1070, 1072, 1077, 1094, as amended, 47 U.S.C. 154, 201, 202, 203, 205, 218, 403.

2. Section 69.603 is revised to read as follows:

**§ 69.603 Association functions.**

(a) The Association shall not engage in any activity that is not related to the preparation of access charge tariffs or the collection and distribution of access charge revenues or the operation of a billing and collection pool on an untariffed basis unless such activity is expressly authorized by order of the Commission.

(b) Participation in Commission or court proceedings relating to access charge tariffs, the billing and collection of access charges, the distribution of access charge revenues, or the operation of a billing and collection pool on an untariffed basis shall be deemed to be authorized association activities.

(c) The association shall administer the Universal Service charge, including the direct billing to and collection of associated revenues on a monthly basis from interexchange carriers pursuant to § 60.116 and the distribution of these revenues to qualified telephone companies based on their share of expenses assigned to the Universal Service Factor portion of the interstate allocation pursuant to § 36.631.

(d) The association shall administer the Lifeline Assistance charge, including the direct billing to and collection of associated revenues on a monthly basis from interexchange carriers pursuant to § 69.117, and the distribution of these revenues to qualified telephone companies based on their share of expenses assigned to the Lifeline Assistance Fund pursuant to § 36.741 and of End User Common Line charges associated with the operation of § 69.104(j)–(l).

(e) The association shall annually compute, in accordance with §§ 69.105 and 69.612, the mandatory Long Term Support payment of telephone companies that are not association Common Line tariff participants, bill and collect the appropriate amounts on a monthly basis from such telephone companies, and distribute Long Term Support revenue among association Carrier Common Line tariff participants.

(f) The association shall annually compute, in accordance with § 69.612, the Transitional Support requirement for Level I and Level II Company Receivers, bill and collect the appropriate amounts on a monthly basis from Level I and Level II Contributors, and distribute the Transitional Support requirement among Level I and Level II Receivers.

(g) The association shall also prepare and file an access charge tariff containing terms and conditions for access service and form for the filing of rate schedules by telephone companies that choose to reference these terms and conditions while filing their own access rates.

[FR Doc. 89–4410 Filed 2–24–89; 8:45 am]

BILLING CODE 6712-01-M

**47 CFR Part 69**

**[CC Docket No. 87-2; FCC 88-363]**

## Common Carrier Services; WATS-Related and Other Amendments of the Access Charge Rules

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** The FCC adopted rules in a *Report and Order* in CC Docket No. 87-2 that specify the apportionment of the administrative expenses of the National Exchange Carrier Association (NECA) among its various activities and NECA's cost support requirements in conjunction with its annual tariff filings. The rules were adopted to provide for a fairer, more accurate apportionment of NECA's administrative expenses among its activities and to provide the FCC and interested persons with an opportunity to review NECA's expenses.

**EFFECTIVE DATE:** April 1, 1989. Section 69.603(i)(7) is applicable for tariffs filed with effective dates of April 1, 1989, or later.

**ADDRESS:** Federal Communications Commission, Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Douglas L. Slotten, Policy and Program Planning Division, Common Carrier Bureau, (202) 632-9342.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's *Report and Order* amending Part 69 of the Commission's rules, CC Docket No. 87-2, adopted November 7, 1988, and released November 18, 1988.

The full text of this decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

### Summary of Order

In January 1987, the FCC issued a *Memorandum Opinion and Order and Notice of Proposed Rulemaking (Notice)*, 2 FCC Rcd 381 (1987), in which it proposed to amend § 69.603 of its rules, 47 CFR 69.603, governing the recovery of the expenses of the National Exchange Carrier Association (NECA) to produce a result that would more accurately reflect NECA's various present and future activities. The FCC noted that under our current rules all of NECA's expenses, including expenses related to the preparation of all NECA tariffs and the administration of the traffic-sensitive (TS) pool, are being recovered from the common line elements. The FCC also observed that it had authorized NECA to engage in certain activities other than the administration of interstate access charges.

The *Notice* proposed that NECA divide its expenses into two categories. Category I would include those expenses associated with the preparation, defense, and modification of NECA tariffs, the administration of pooled receipts and distributions of exchange carrier revenues resulting from NECA tariffs, and NECA's participation in Commission proceedings involving Subpart G of Part 69 of the Commission's Rules. Category II would consist of all other NECA expenses. The FCC proposed subdividing Category I expenses into common line expenses and other expenses. The FCC also proposed to require the inclusion of data and information on NECA's historical and projected expenses in its tariff filings.

In the *Report and Order*, the FCC adopted its proposed apportionment of NECA expenses between Category I and Category II with one modification. The FCC included language proposed by NECA in the definition of Category I to make it clear that expenses associated with its § 69.603(c)-(g) activities are included in Category I expenses. The FCC found that without such an apportionment, it is not possible to ensure that NECA does not cross-subsidize its Category II activities with revenues from interstate access charges. In reaching this decision, the FCC rejected as too narrow a definition of Category I expenses a proposal of the Bell Atlantic Telephone Companies to exclude from Category I any common line expenses other than those associated Telephone Company of NECA's carrier common line tariff filings. The FCC also declined to require that NECA pleadings disclose that some of its members do not agree with a position it takes when making Category I filing, as proposed by the Bell Atlantic Telephone Companies. The FCC found that NECA's administrative burden would be substantially increased if such a proposal were to be adopted.

The FCC also adopted rules that apportion Category I expenses among the various activities NECA performs under that rubric. In light of the changes to the interstate access charge pooling arrangements and NECA's responsibilities in this revised structure, *See generally, MTS and WATS Market Structure and Amendment of Part 67 of the Commission's Rules and Establishment of a Joint Board*, 2 FCC Rcd 2953 (1987), *aff'd on recon.*, 3 FCC Rcd 4543 (1988), *appeal pending sub nom.* Public Service Commission of the District of Columbia v. FCC, No. 88-1661 (D.C. Cir. filed Sept. 12, 1988), the FCC concluded that NECA's proposal for three subcategories was more consistent with NECA's new duties than the FCC's original proposal. The rules adopted apportion NECA's Category I expenses among three components in proportion to the revenues associated with each component. The components reflect NECA's activities with respect to the Universal Service Fund and Lifeline Assistance programs; NECA common line tariffs, Long Term Support, and Transitional Support; and all other NECA pool tariffs, including its "Common Terms and Conditions" tariff. These rules essentially retain the FCC proposal, but divide the proposed common line subcategory into two parts—one for expenses ralating to NECA's administration of the Universal Service Fund and Lifeline Assistance programs and the other for the costs of administering NECA's common line pool and the common line support flows. The FCC found that the apportioned administrative expenses will be recovered as part of the revenue requirement for the activities associated with each subcategory, which is consistent with the goal to better tailor the apportionment of NECA's expenses to the activities for which they are incurred. The FCC also concluded that disaggregation of expenses based on the proportion of revenues from each category is an administratively simple approach that will result in fair apportionments without imposing significant additional administrative expenses on NECA. The FCC rejected an ALLTEL Corporation proposal that NECA be required to create a separate category under Category I expenses for the expenses of administering the TS pool and that these costs should continue to be part of the revenue requirement for Association tariffs filed pursuant to §§ 69.4(a) and (b)(2) (the CCL rate element) finding that it would be inconsistent with its goal that these costs be apportioned in a manner that associates the costs with the beneficiaries of the expense.

Finally, the FCC adopted a rule requiring NECA to file certain data and information relating to its administrative expenses with its annual tariff filing to permit the FCC to review NECA's expenses and to enable interested

persons to comment on NECA's administrative expenses. The FCC did not specify time periods for the NECA administrative expense data, noting that in the absence of contrary instructions, administrative expense data should be consistent with other cost support data that is filed with a particular access tariff filing.

The FCC certified that the requirements contained in the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are not applicable to the rules adopted in this proceeding.

### Paperwork Reduction

The proposal contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to contain no new or modified form, information collection and/or recordkeeping, labelling, disclosure, or record retention requirements; and will not increase or decrease burden hours imposed on the public.

### Ordering Clauses

Accordingly, *it is ordered,* Pursuant to sections 1, 4 (i)–(j), 201–202, 205, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154 (i)–(j), 201–202, 205, and 403, that Part 69 of the Commission's rules is amended as set forth below. Sections 69.603 (h)–(i)(6) shall become effective on April 1, 1989. Section 69.603(i)(7) shall be effective for any tariff containing an effective date of April 1, 1989, or later.

*It is further ordered,* That the motion filed by the National Exchange Carrier Association to accept its Supplemental Comments is granted.

Federal Communications Commission.

**William F. Caton,**

*Acting Secretary.*

### List of Subjects in 47 CFR Part 69

Access charge rules, Commission common carriers, Telephone, Uniform system of accounts.

Part 69—Access charges of Title 47 of the Code of Federal Regulations is amended as follows:

## PART 69—[AMENDED]

1. The authority citation for Part 69 continues to read as follows:

**Authority:** Secs. 4, 201, 202, 203, 205, 218, 403; 48 Stat. 1066, 1070, 1072, 1077, 1094, as amended, 47 U.S.C. 154, 201, 202, 203, 205, 218, 403.

2. Section 69.603 is amended by adding new paragraphs (h) and (i) to read:

**§ 69.603 Association functions.**

* * * * *

(h) The association shall divide the expenses of its operations into two categories. The first category ("Category I Expenses") shall consist of those expenses that are associated with the preparation, defense, and modification of association tariffs, those expenses that are associated with the administration of pooled receipts and distributions of exchange carrier revenues resulting from association tariffs, those expenses that are associated with association functions pursuant to § 69.603 (c)–(g), and those expenses that pertain to Commission proceedings involving Subpart G of Part 69 of the Commission's rules. The second category ("Category II Expenses") shall consist of all other association expenses. Category I Expenses shall be sub-divided into three components in proportion to the revenues associated with each component. The first component ("Category I.A Expenses") shall be in proportion to the Universal Service Fund and Lifeline Assistance revenues. The second component ("Category I.B Expenses") shall be in proportion to the sum of the association End User Common Line revenues, the association Carrier Common Line revenues, the association Special Access Surcharge revenues, the Long Term Support payments and the Transitional Support payments. The third component ("Category I.C Expenses") shall be in proportion to the revenues from all other association interstate access charges.

(i)(1) The revenue requirement for association tariffs filed pursuant to § 69.4(c) shall not include any association expenses other than Category I.A Expenses.

(2) The revenue requirement for association tariffs filed pursuant to § 69.4 (a) and (b)(2) shall not include any Association expenses other than Category I.B Expenses.

(3) The revenue requirement for association tariffs filed pursuant to § 69.4(b) (1) and (3)–(7) shall not include any association expenses other than Category I.C Expenses.

(4) No distribution to an exchange carrier of Universal Service Fund and Lifeline Assistance revenues shall include adjustments for association expenses other than Category I.A Expenses.

(5) No distribution to an exchange carrier of revenues from association End User Common Line or Carrier Common Line charges, Special Access Surcharges or Long Term Support or Transitional Support payments shall include adjustments for association expenses other than Category I.B Expenses.

(6) No distribution to an exchange carrier of revenues from association interstate access charges other than End User Common Line and Carrier Common Line charges and Special Access Surcharges shall include adjustments for association expenses other than Category I.C Expenses.

(7) The association shall separately identify all Category I.A, I.B and I.C expenses in cost support materials filed with each annual association access tariff filing.

[FR Doc. 89–4442 Filed 2–24–89; 8:45 am]

BILLING CODE 6712–01–M

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## 47 CFR Part 73

**[MM Docket No. 88–198; RM–6313]**

## Radio Broadcasting Services; Harbeck-Fruitdale, OR

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commission, at the request of Carl Wilson, allots Channel 252A to Harbeck-Fruitdale, Oregon, as the community's first local FM service. Channel 252A can be allotted to Harbeck-Fruitdale in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. The coordinates for this allotment are North Latitude 42–24–53 and West Longitude 123–19–53. With this action, this proceeding is terminated.

**DATES:** Effective April 3, 1989. The window period for filing applications will open on April 4, 1989, and close on May 5, 1989.

**FOR FURTHER INFORMATION CONTACT:** Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Report and Order, MM Docket No. 88–198, adopted January 25, 1989, and released February 17, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

## PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303.

**§ 73.202 [Amended]**

2. Section 73.202(b), the FM Table of Allotments for Oregon is amended by adding Harbeck-Fruitdale, Channel 252A.

Federal Communications Commission.

**Steve Kaminer,**

*Deputy Chief, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 89-4402 Filed 2-24-89; 8:45 am]

BILLING CODE 6712-01-M

# Proposed Rules

Federal Register
Vol. 54, No. 37
Monday, February 27, 1989

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF AGRICULTURE

### Federal Grain Inspection Service

### 7 CFR Part 68

### United States Standards for Rice

**AGENCY:** Federal Grain Inspection Service, USDA [1].

**ACTION:** Proposed rule; reopening of comment period.

**SUMMARY:** The Federal Grain Inspection Service (FGIS) published in the **Federal Register** on October 26, 1988, a proposed rule on revising the United States Standards for Rough Rice. FGIS is reopening the comment period to provide interested persons with additional time in which to prepare comments on the proposed rule.

**DATE:** Comments must be submitted on or before March 10, 1989.

**ADDRESSES:** Comments must be submitted in writing to Lewis Lebakken, Jr., Resources Management Division, USDA, FGIS, Room 0628 South Building, P.O. Box 96454, Washington, DC 20090-6454. Alternatively, telemail users may respond to (IRSTAFF/FGIS/USDA) telemail; telex users may respond to Lewis Lebakken, Jr., TLX: 7607351, ANS:FGIS UC; and telecopy users may send responses to the automatic telecopier machine at (202) 447-4628.

All information received will be made available for public inspection at Room 0628 South Building, 1400 Independence Avenue SW., Washington, DC, during regular business hours.

**FOR FURTHER INFORMATION CONTACT:** Lewis Lebakken, Jr., address as above, telephone (202) 475-3428.

**SUPPLEMENTARY INFORMATION:** FGIS published in the **Federal Register** on October 26, 1988 (53 FR 43213, FR Doc. 88-24703), a proposed rule on revising the United States Standards for Rough Rice by adding a separate category for heat-damaged kernels and redefining the special grade "weevily" to the more inclusive and meaningful term "infested." FGIS also proposed revising the United States Standards for Rough Rice, Brown Rice for Processing, and Milled Rice by (1) incorporating the insect infestation tolerances in the standards, (2) revising the rounding procedures as stated in the sections on percentages to more generally accepted mathematical procedures, (3) eliminating many of the footnotes and references to footnotes throughout the standards and incorporating the information into the text of the standards, and (4) making other miscellaneous nonsubstantive changes to simplify and provide for uniform provisions and language in the standards.

The proposed rule provided for a comment period to obtain public views and comments on the revisions. Comments were to be received by November 25, 1988. Written comments were received from six organizations or firms concerning the proposed changes with some supporting the proposed changes and others opposing the changes. The comments indicated a disparity of opinion concerning the potential impact of the proposed rule. Two commenters opposed the proposal to add a special category for heat-damaged kernels in the rough rice standards because they believed it would have a negative impact on producers. In addition, a commenter opposed the revision concerning the rounding procedures because the commenter believed that it would have a negative impact on processors. However, the basis for these opinions is unclear.

Accordingly, it has been determined that additional public input would prove beneficial and that all interested persons, including the commenters, will be afforded more time to consider the proposal and its potential impact. Therefore, the comment period is reopened. Additional comments on this proposal will be accepted through March 10, 1989.

(Sections 202-208, 60 Stat. 1087, as amended (7 U.S.C. 1621 *et seq.*))

Dated: February 22, 1989.

**W. Kirk Miller,**

*Administrator.*

[FR Doc. 89-4471 Filed 2-24-89; 8:45 am]

BILLING CODE 3410-EN-M

[1] The authority to exercise the functions of the Secretary of Agriculture contained in the Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1621-1627), concerning inspections and standardization activities related to grain and similar commodities and products thereof has been delegated to the Administrator, Federal Grain Inspection Service (7 U.S.C. 75a; 7 CFR 68.5).

## NUCLEAR REGULATORY COMMISSION

### 10 CFR Parts 50 and 55

### Education and Experience Requirements for Senior Reactor Operators and Supervisors at Nuclear Power Plants

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Proposed rule; extension of comment period.

**SUMMARY:** On December 29, 1988 (53 FR 52716), the Nuclear Regulatory Commission published two alternatives for amending its regulations regarding educational requirements for operating personnel at nuclear power plants. The proposed amendments would require additional education and experience requirements for senior operators and supervisors. The notice of proposed rulemaking stated that the comment period was to expire on February 27, 1989.

The Commission has received a request to extend the comment period an additional thirty days in order to permit the commenter to prepare a more thoroughly researched and effective response. After considering this request, and the reasons stated therein, the Commission has decided to extend the comment period for an additional thirty days.

**DATES:** The comment period has been extended and now expires on March 29, 1989. Comments received after this date will be considered if it is practical to do so, but the Commission is able to assure consideration only for comments received on or before March 29, 1989. However, the Commission encourages early submittal of comments to expedite completion of this rulemaking action.

**ADDRESSES:** Mail comments to: The Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch.

Deliver comments to: One White Flint North, 11555 Rockville Pike, Rockville,

Maryland, between 7:30 a.m. and 4:15 p.m. Comments may also be delivered to the NRC Public Document Room, 2120 L Street, Lower Level, NW., Washington, DC between 7:30 a.m. and 4:15 p.m.

**FOR FURTHER INFORMATION CONTACT:** M. R. Fleishman, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 492-3794.

Dated at Rockville, Maryland this 22nd day of February, 1989.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

*Secretary of the Commission.*

[FR Doc. 89-4465 Filed 2-24-89; 8:45 am]

BILLING CODE 7590-01-M

## SECURITIES AND EXCHANGE COMMISSION

### 17 CFR Parts 210, 239, 240, 249, 259, and 274

**[Release Nos. 33-6818; 34-26556; 35-24823; IC-16815; File No. S7-4-89]**

### Amendments to Rules, Forms and Codification of Financial Reporting Policies

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Proposed rules.

**SUMMARY:** The Commission today is publishing for comment proposed amendments to various rules and forms under the Securities Act of 1933, the Securities Exchange Act of 1934, the Public Utility Holding Company Act of 1935, and the Investment Company Act of 1940. The Commission is also adopting certain technical changes to the Codification of Financial Reporting Policies. These revisions are necessary to conform such rules and forms to recently adopted accounting standards. These proposed amendments include revisions of Rule 3-19 of Regulation S-X and Items 17 and 18 of Form 20-F that would require foreign private issuers to provide a statement of cash flows or substantially similar information in filings with the Commission.

**DATES:** Comments should be received by the Commission on or before April 28, 1989.

**ADDRESS:** Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Comment letters should refer to File No. S7-4-89. All comment letters received will be available for public inspection and copying in the Commission's Public Reference Room at the same address.

**FOR FURTHER INFORMATION CONTACT:** John W. Albert or Teresa Iannaconi, Office of the Chief Accountant (202-272-2130) or Howard P. Hodges Jr. or Robert Bayless, Division of Corporation Finance (202-272-2553), Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549.

**SUPPLEMENTARY INFORMATION:** The Securities and Exchange Commission is proposing amendments to Rules 3-02 [1], 3-03 [2], 3-09 [3], 3-12 [4], 3-18 [5], 3-19 [6], 4-08 [7], 4-10 [8], 7-04 [9], 9-03 [10], 10-01 [11], 12-04 [12] and 12-16 [13] of Regulation S-X [14] and revisions to Forms S-18 [15] and 1-A [16] under the Securities Act of 1933 (Securities Act), Schedules 13E-3 [17] and 13E-4 [18], Rule 14a-3(b)(1) [19], and Forms X-17A-5 [20], 20-F [21] and 10-K [22] under the Securities Exchange Act of 1934 (Exchange Act), Form U5S [23] under the Public Utility Holding Company Act of 1935 (Utility Act), and Form N-4 [24] under the Investment Company Act of 1940 (Investment Company Act).

### I. Executive Summary

The Commission historically has looked to the standard setting bodies designated by the accounting profession to establish and improve accounting principles, subject to Commission oversight. [25] The Commission's rules require compliance with generally accepted accounting principles (GAAP), and the requirements of individual rules and forms generally are used to interpret, supplement or expand upon the basic GAAP requirements. Since December 1986 the Financial Accounting Standards Board (FASB) has issued several Statements of Financial Accounting Standards (SFAS) that result in reporting requirements that are duplicative of, or, in some instances, different from the Commission's requirements. Additionally, oil and gas industry disclosures which had been retained during the phase-in period for SFAS No. 69, *Disclosures about Oil and Gas Producing Activities*, are no longer necessary. The purpose of these proposals is to eliminate duplicative and obsolete disclosures and to conform reporting requirements as necessary to achieve consistency between the Commission's rules, forms and policies and existing accounting principles.

The following chart summarizes the proposed amendments and provides the rationale for such changes.

**Summary of Proposed Amendments**

The table that follows is presented as a guide to assist the reader in understanding the changes being proposed by presenting a brief description of the proposed changes together with an explanation of the rationale for each change. (Also included are explanations of the various revisions to the Codification of Financial Reporting Policies (Codification) being made concurrently with this proposal.) This table should be used as a supplement to the discussions provided in latter sections of this release.

| Topic | Proposed Change | Rationale |
|---|---|---|
| Cash Flows SFAS No. 95 ..... | Amend Regulation S-X (S-X), Rule 3-18 and Investment Company Act Form N-4 to require registered investment companies to provide a statement of cash flows in filings with the Commission whenever necessary to comply with GAAP | SFAS No. 95 requires a statement of cash flows to be provided as a component of a set of basic financial statements. The FASB has recently amended this standard to exempt certain registered investment companies from this requirement. The rules as amended would clarify the requirement to provide the statement whenever necessary to comply with GAAP |

[1] 17 CFR 210.3-02.
[2] 17 CFR 210.3-03.
[3] 17 CFR 210.3-09.
[4] 17 CFR 210.3-12.
[5] 17 CFR 210.3-18.
[6] 17 CFR 210.3-19.
[7] 17 CFR 210.4-08
[8] 17 CFR 210.4-10.
[9] 17 CFR 210.7-04.
[10] 17 CFR 210.9-03.
[11] 17 CFR 210.10-01.
[12] 17 CFR 210.12-04.
[13] 17 CFR 210.12-16.
[14] 17 CFR 210.
[15] 17 CFR 239.28.
[16] 17 CFR 239.90.
[17] 17 CFR 240.13e-100.
[18] 17 CFR 240.13e-101.
[19] 17 CFR 240.14a-3(b)(1).
[20] 17 CFR 240.17a-5.
[21] 17 CFR 249.220f.
[22] 17 CFR 249.310.
[23] 17 CFR 259.5s.
[24] 17 CFR 274.11c.
[25] See, Accounting Series Release No. 150 (December 20, 1973) (39 FR 1260).

| Topic | Proposed Change | Rationale |
|---|---|---|
| | Amend S-X, Rule 10-01 to permit the statement of cash flows to be provided in abbreviated form for interim reporting | This would replace, and be consistent with, the existing rule that permits the statement of changes in financial position to be provided in abbreviated form for interim reporting. |
| | Amend S-X, Rule 3-19 and Items 17 and 18 of Form 20-F for foreign private issuers to substitute a requirement to present a statement of cash flows, or disclosure that is substantially similar, for the existing requirement to provide a statement of changes in financial position | This would conform the requirements of S-X, Rule 3-19 and Form 20-F for foreign private issuers to require a cash flow statement or substantially similar information that provides the disclosures, including supplemental information, required by SFAS No. 95. |
| | Amend various rules in Regulation S-X and forms filed under the Securities Act of 1933, Securities Exchange Act of 1934, Public Utility Holding Company Act of 1935 and Investment Company Act of 1940 to revise references to changes in financial position and funds flows to refer to cash flows. Similar changes are being adopted to Sections in the Codification. | Proposed amendments and Codification revisions reflect replacement of references such as "changes in financial position" and "funds flows" with new references to "cash flows" as consistent with SFAS No. 95. |
| Income Taxes/SFAS No. 96. | For companies that have adopted SFAS No. 96, amend S-X, Rule 4-08(h) as follows: | |
| | (1) Delete requirement to disclose the net effects on income tax expense of significant temporary differences, and add a requirement to disclose the amount of each significant component of a deferred tax liability or asset; and | (1) The existing requirement would be deleted as it is inconsistent with the new balance sheet orientation of deferred tax accounting. The proposed amendments would retain the requirement to quantify the amount of significant temporary differences, although its focus would be revised to show the balance sheet rather than the income statement effects. These disclosures would supplement paragraph 24 of SFAS No. 96, which requires disclosure of the nature of the significant components of deferred tax assets and liabilities. |
| | (2) Delete reconciliation between the amount of reported total income tax expense and the amount computed by multiplying the income (loss) before tax by the applicable statutory Federal income tax rate. | (2) A separate rule is unnecessary since paragraph 28 of SFAS No. 96 requires a reconciliation that is similar to the reconciliation currently required by 4-08(h). Language in the rule that defines the level of significance for purposes of disclosure of individual reconciling items would be retained. |
| Deferred Loan Origination Fees and Costs/SFAS No. 91. | Amend S-X, Rule 9-03 to require parenthetical disclosure of deferred fees and costs included in loan balances. | Separate disclosure of unamortized deferred loan origination fees and costs included in the loan balance on the balance sheet is consistent with Rule 9-03 disclosure of other items associated with loan balances. |
| Premium and other Consideration and Realized Gains and Losses of Insurance Companies/SFAS No. 97. | Amend S-X, Rule 7-04 to:<br>(a) recognize that insurers' revenues may include consideration received for services as well as insurance premiums, and.<br>(b) reflect realized investment gains and losses on a pretax basis as a separate line item and a component of pretax income from continuing operations rather than included on a net of tax basis below income from operations, and.<br>(c) require separate disclosure of gains and losses allocable to policyholders and separate accounts. | Amendment would recognize revised concept of revenues of insurers and would conform S-X to financial statement presentation adopted in SFAS No. 97. Incremental disclosure of gains and losses allocable to policyholders and separate accounts would be adopted to enhance comparability of registrants' financial statements. |
| Consolidation of Majority Owned Subsidiaries/SFAS No. 94. | Delete Financial Reporting Codification section 105(b), which discusses nonconsolidation of nonhomogeneous subsidiaries. | SFAS No. 94 discontinued the nonhomogeneity exception to consolidation. Therefore, section 105(b) is deleted as it is now obsolete. |
| Oil and Gas Disclosure Requirements/SFAS No. 69. | Delete paragraph (k) of Rule 4-10 since the phase-in period, during which optional application of SFAS No. 69 was permitted for certain prior periods, has expired. | Amendment would delete rules no longer necessary. |

## II. Statement of Cash Flows

In November 1987 the FASB issued SFAS No. 95, *Statement of Cash Flows.* Statement No. 95 requires presentation of a statement of cash flows as a component of a set of basic financial statements and supersedes the previous requirement to present a statement of changes in financial position.

The proposed amendments consist largely of "housekeeping" matters occasioned by the issuance of SFAS No. 95. All rules and forms that contains references to the previously required statement of changes in financial position would be amended to refer to the newly adopted statement of cash flows.

*Interim Reporting*

The Commission proposes to amend Rule 10-01 of Regulation S-X to permit the use of an abbreviated form of the statement of cash flows for interim financial statements. This is consistent with the current rule, which permits the use of an abbreviated form of the statement of changes in financial position. It is proposed that cash interest and income taxes paid should be separately disclosed in the abbreviated statement or in a footnote thereto, since such information is believed to be valuable for financial statement analyses. Commentators are requested to address the costs and benefits of such disclosure in interim financial statements.

*Investment Companies*

The Commission also proposes to amend Rule 3-18 of Regulation S-X, relating to registered investment companies, to require a cash flow statement to be presented to the extent necessary to comply with GAAP.[26]

*Foreign Private Issuers*

The Commission proposes to amend Regulation S-X, Rule 3-19 and Items 17 and 18 of Form 20-F to delete the existing requirement for foreign private issuers to provide a statement of changes in financial position and to adopt a requirement to provide a statement of cash flows or substantially similar information as a component of the financial statements included in filings with the Commission.

[26] Statement of Financial Accounting Standards No. 102, *Statement of Cash Flows—Exemption of Certain Enterprises and Classification of Cash Flows from Certain Securities Acquired for Resale* exempts certain highly liquid investment companies from the requirement to provide a statement of cash flows.

The general financial statement requirements applicable to foreign private issuers are found in Items 17 and 18 of Form 20–F.[27] These items provide that, while foreign issuers' financial statements may be prepared according to a comprehensive body of accounting principles other than those generally accepted in the United States, such financial statements must disclose an information content substantially similar to financial statements that comply with United States GAAP. Consistent with that requirement, it is proposed to amend Rule 3–19 to refer to a statement of cash flows and to expand the language of Items 17 and 18 to require foreign issuers to present a cash flow statement or substantially similar information.

The proposal requires that financial statement that are prepared in accordance with a comprehensive body of principles that does not require a statement of cash or funds flow must include a statement of cash flows that complies with the requirements of SFAS No. 95. If the financial statements are prepared in accordance with a body of principles that requires a cash or funds flow statement in a format that differs from the statement required in the United States, the proposal permits presentation of substantially similar information in financial statement or footnote form.[28]

Compliance with the requirement to present an information content substantially similar to financial statements that comply with U.S. GAAP would require presentation of all supplemental disclosures required by SFAS No. 95. For example, paragraph 32 of SFAS No. 95 requires disclosure of noncash financing and investing activities.

Paragraph 29 requires companies that do not adopt the direct method of reporting operating cash flows to disclose the amounts of interest and income taxes paid during the period. The purpose of this latter disclosure is to provide comparability with the direct method of presentation of the statement of cash flows, which requires separate presentation of interest and income taxes paid, and because the FASB believed that information about interest and taxes was both available and useful. Analysts have specifically requested this information, indicating its usefulness in assessing an enterprise's debt service requirements relative to its operating cash flows. Comments are specifically requested as to the costs and benefits of requiring any or all of this supplemental disclosure and with respect to the format of the information presented.

In proposing to amend the reporting requirements for foreign private issuers, the Commission does not believe it would impose an undue hardship on foreign registrants.[29] Foreign registrants are required by the Commission's current rules to provide a statement of changes in financial position and in most cases it would be a relatively minor adjustment to convert from a statement of changes in financial position to a statement of cash flows.

The Commission recognizes that strict compliance may be more difficult or costly for some foreign private issuers.[30] However, the Commission believes that the disclosures prescribed by SFAS No. 95 are useful, and that it should continue to require foreign issuers to file basic financial statements containing information that is substantially similar to that required by U.S. GAAP.[31] Commentators are encouraged to address whether foreign private issuers would face any unusual problems in developing and presenting a cash flow statement or substantially similar information.

*Summarized Financial Information*

Although not specifically included in the proposed amendments, the Commission encourages specific public comments on whether Rule 1–02(aa) should be expanded to include disclosure of cash flows from operating, investing and financing activities as well as total cash flow information. Rule 1–02(aa) sets forth minimum requirements for the content of summarized financial information of subsidiaries and investees accounted for under the equity method and presently does not include cash flow data. Commentators are requested to address the usefulness of such a requirement and the nature and extent of the data that should be required.

## III. Reporting on Income Taxes

In December 1987 the FASB issued SFAS No. 96, *Accounting for Income Taxes*. Statement No. 96 establishes financial accounting and reporting standards for the effects of income taxes on reporting entities.[32] It requires an asset and liability approach to accounting and reporting for income taxes.

Rule 4–08(h) of Regulation S-X contains the Commission's income tax disclosure requirements. Certain of those requirements were adopted by the FASB in Statement 96. The Commission proposes to amend Rule 4–08(h) to delete requirements that are now included in SFAS No. 96. Specifically, the requirement in Rule 4–08(h) to provide a reconciliation between the amount of reported total income tax expense and the amount computed by multiplying the income (loss) before tax by the applicable statutory Federal income tax rate is now unnecessary because paragraph 28 of SFAS No. 96 requires a similar reconciliation.

Additionally, it is proposed that the disclosure of the amounts of deferred taxes be revised in order to make such disclosure consistent with the balance sheet orientation of the new deferred tax standard. Presently, Rule 4–08(h) calls for disclosure of the net effect on income tax expense of significant timing differences (such as depreciation or warranty costs). Since SFAS No. 96 focuses on the balances sheet rather than income statement impact of significant temporary differences, the

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[27] Form 20–F is both the registration form and the annual report form which may be filed by foreign private issuers pursuant to the requirements of the Exchange Act.

[28] The substantially similar information may be presented in a tabular reconciliation format provided that such reconciliation can be presented in a clearly understandable manner.

[29] In attempting to assess the burden on foreign registrants, the Commission has considered International Accounting Standards (IAS) that have been adopted and published by the International Accounting Standards Committee (IASC). The IASC is an international professional organization which is supported by professional accounting bodies representing approximately 70 countries. A major role of the IASC is to promote worldwide harmonization of accounting standards.

IAS No. 7 requires inclusion in basic financial statements of a statement of changes in financial position for each year for which an income statement is provided. As was the case in the United States prior to the adoption of SFAS No. 95, the statement is permitted to be prepared on either a cash or working capital basis and must disclose "funds" provided by operations. IASC's 1988 *Annual Review* reported the results of a survey that indicated that in excess of 90% of surveyed countries had adopted standards that were in conformity with IAS No. 7. The IASC's *Survey of the Use and Application of International Accounting Standards 1988* notes that there is interest in may parts of the world in using cash flow statements and there is a growing trend in favor of the use of cash rather than working capital in presentation of the changes in financial condition.

[30] Implementation of SFAS No. 95 reportedly has been more difficult for some U.S. registrants than for others. For example, financial institutions may have had to develop new systems for gathering data necessary for preparation of the new cash flow statement.

[31] The Commission notes that, as with any other accounting issue, foreign registrants may consult with the staff with regard to any unusual difficulty or burden imposed by the Commission's rules.

[32] SFAS No. 96 as amended by SFAS No. 100 is effective for years beginning after December 15, 1989. Earlier application is permitted. Initial application must be as of the beginning of an enterprise's fiscal year. Financial statements for fiscal years before the effective date of the statement may be restated to conform to the provisions of the statement.

Commission is proposing to revise its rules for income tax disclosures by substituting a requirement to disclose the amount of each significant component of a deferred tax liability or asset.

The Commission believes that such information is useful to users of financial statements in assessing the potential timing and the degree of management control over the reversal of timing differences.[33] Further, the Commission believes that such information would be readily available to the registrant since it is a necessary component of the calculations required by SFAS No. 96. Commentators are requested to address the costs and benefits of providing this information.

## IV. Loan Origination Fees

In December 1986 the FASB issued SFAS No. 91, *Accounting for Nonrefundable Fees and Costs Associated with Originating or Acquiring Loans and Initial Direct Costs of Leases.* Rule 9–03 of Regulation S-X, which governs the form and content of balance sheets of bank holding companies, currently requires presentation of the total loan portfolio balance with separate disclosure of related loan loss allowances and unearned income. The Commission proposes to amend Rule 9–03.7 to require disclosure of the net unamortized deferred origination fees and costs which SFAS No. 91 requires to be carried as part of the loan balance. Separate disclosure is consistent with requirements for disclosures of other accounts that are related to loan balances.

## V. Accounting and Reporting by Insurance Companies

In December 1987 the FASB issued SFAS No. 97, *Accounting and Reporting by Insurance Enterprises for Certain Long Duration Contracts and for Realized Gains and Losses from the Sale of Investments.* SFAS No. 97 requires that realized investment gains and losses be included in the determination of income from operations, rather than being presented in the income statement below operating earnings shown net of applicable income taxes. Consistent with this standard, the Commission proposes to amend Rule 7–04 of Regulation S–X to require the presentation of realized gains and losses on a pretax basis in the computation of income or loss from continuing operations. The Commission understands that there is some diversity in practice among insurance companies with respect to whether realized gains and losses allocable to policyholders and separate accounts [34] are included in realized gains and losses reported in financial statements. Required disclosure of the amounts of realized gains and losses allocable to policyholders and separate accounts is proposed to facilitate comparability of financial statements by enabling users of financial statements to identify gains and losses which inure to the benefit of shareholders as opposed to policyholders and separate accounts.

SFAS No. 97 also addresses accounting for other consideration earned by insurance enterprises such as administrative and surrender charges. In order to accommodate recognition of the broader range of revenue generating activities of insurance enterprises, Rule 7–04 is proposed to be amended to include a new revenue caption, "Other consideration."

## VI. Consolidation of Majority Owned Subsidiaries

In October 1987, the FASB issued SFAS No. 94, *Consolidation of All Majority Owned Subsidiaries,* which requires consolidation of all majority owned subsidiaries unless control is temporary or does not rest with the majority owner. The Financial Reporting Codification is amended at Section 105 to delete the discussion of the non-homogeneity exception to consolidation which was eliminated by the adoption of the new standard.

## VII. Oil and Gas Disclosure Requirements

The Commission is also proposing to delete Rule 4–10(k) of S–X that requires supplemental disclosures of oil and gas producing activities that are substantially similar to disclosure requirements contained in SFAS No. 69. This rule is no longer necessary because the transition period for the application of comparable rules under SFAS No. 69 has expired.[35] As a result of the deletion of paragraph (6) of Rule 4–10(k), an amendment is also being proposed to Rule 4–10(i)(4), which currently refers to Rule 4–10(k)(6), to direct registrants to the requirements of SFAS No. 69 in applying the full cost ceiling test.

## VIII. Solicitation of Comments

As noted above, the Commission is proposing amendments to its rules and forms to conform them to current GAAP and to eliminate duplication of GAAP requirements. The Commission is soliciting comments to determine whether these changes adequately address the new accounting standards and to determine whether other amendments of these items are appropriate for that purpose.

The Commission also requests comment on whether the proposed revisions, if adopted, would have an adverse effect on competition or would impose a burden on competition that is neither necessary nor appropriate in furthering the purposes of the Securities Act and the Exchangte Act. Comments in this regard will be considered by the Commission in complying with its responsibilities under section 23(a)(2) of the Exchange Act.

## Regulatory Flexibility Act

David S. Ruder, Chairman of the Commission, has certified that the proposed amendments will not have a significant economic impact on any entity subject to their provisions, and, therefore, will not have a significant impact on a substantial number of small entities. The reason for this certification is that the proposed amendments are intended to conform rules and forms to GAAP, as recently amended, to which registrants are already subject.

## Codification Update

The "Codification of Financial Reporting Policies" announced in Financial Reporting Release 1 (Apil 15, 1982) (47 FR 21028) is updated:

1. By amending section 102.03 to replace the references to "changes in financial position" with "cash flows".

2. By amending section 105 to delete paragraph (b) and to redesignate paragraphs (c) and (d) as (b) and (c).

3. By amending the first paragraph in section 202.03 to replace the reference to "cash or funds generated" with "cash flows".

4. By amending the second paragraph in section 202.03 to replace the reference

[33] For example, while the reversal of timing differences which result from the use of accelerated tax depreciation methods may be significantly influenced by managerial decisions, the reversal of an accrued litigation reserve generally would be contingent upon external events.

[34] A separate account is defined in section 2(a)(37) of the Investment Company Act of 1940 and in paragraphs 53 and 54 of SFAS No. 60. A separate account of an insurance company is an account in which the gains and losses on assets allocated to the account are credited to or charged against the account rather than the insurance company's general operations.

[35] When SFAS No. 69 was adopted in 1982, it was made effective for years beginning on or after December 15, 1982 with earlier application encouraged but not required. The Commission's rules were amended in 1983 to indicate that the requirements of Rule 4–10(k) would not apply to fiscal years beginning on or after December 15, 1982, thus ensuring that supplemental disclosure requirements under Rule 4–10(k) would phase out as SFAS No. 69 requirements phased in.

to "funds generated from operations" with "cash flows from operating activities", to revise the reference from "source and application of funds statement" to "statement of cash flows" and by substituting the term "cash flows" for the term "funds" wherever it appears.

5. By amending section 202.04 to replace the reference to "funds flow" with "cash flow".

6. By amending sections 302.01.a, 302.01.b, and 302.01.c to replace the reference to "changes in financial position" with "cash flows".

The Codification is a separate publication issued by the SEC. It will not be published in the **Federal Register**/ Code of Federal Regulations system.

**List of Subjects in 17 CFR Parts 210, 239, 240, 249, 259 and 274**

Accounting, Reporting and recordkeeping requirements, Securities, Utilities, Investment companies.

**Text of Proposed Rules**

In accordance with the foregoing, Title 17, Chapter II, of the Code of Federal Regulations is proposed to be amended as follows:

## PART 210—FORM AND CONTENT OF AND REQUIREMENTS FOR FINANCIAL STATEMENTS, SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934, PUBLIC UTILITY HOLDING COMPANY ACT OF 1935, INVESTMENT COMPANY ACT OF 1940, AND ENERGY POLICY AND CONSERVATION ACT OF 1975

1. The authority citation for Part 210 continues to read, in part, as follows:

Authority: Secs. 6, 7, 8, 10, 19 and Schedule A of the Securities Act of 1933 (15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77aa(25)(26)) * * *

2. By amending the introductory note preceding § 210.3–01 to replace the reference to "changes in financial position" with "cash flows".

**§§ 210.3–02, 210.3–03, 210.03–09 and 210.03–12 [Amended]**

3. By amending the following sections by replacing the references to "changes in financial position" with "cash flows".

§ 210.3–02 (a) and (b)

§ 210.3–03(b)

§ 210.3–09(c)

§ 210.3–12(a)

4. By amending § 210.3–18 to redesignate paragraph (a)(3) as paragraph (a)(4) and by adding new paragraph (a)(3) and by revising paragraph (b) to read as follows:

**§ 210.3–18 Special provisions as to registered management investment companies and companies required to be registered as management investment companies.**

(a) * * *

(3) An audited statement of cash flows for the most recent fiscal year, if necessary to comply with generally accepted accounting principles. (Further references in this rule to the requirement for such statement are likewise applicable only to the extent that they are consistent with the requirements of generally accepted accounting principles.)

* * * * *

(b) If the filing is made within 60 days after the end of the registrant's fiscal year and audited financial statements for the most recent fiscal year are not available, the balance sheet or statement of assets and liabilities may be as of the end of the preceding fiscal year and the filing shall include an additional balance sheet or statement of assets and liabilities as of an interim date within 245 days of the date of filing. In addition, the statements of operations and cash flows (if required by generally accepted accounting principles) shall be provided for the preceding fiscal year and the statement of changes in net assets shall be provided for the two preceding fiscal years and each of the statements shall be provided for the interim period between the end of the preceding fiscal year and the date of the most recent balance sheet or statement of assets and liabilities being filed. Financial statements for the corresponding period of the preceding fiscal year need not be provided.

* * * * *

5. By amending § 210.3–18(c) to replace the reference to "statements of operations and changes in net assets" with "statements of operations, cash flows, and changes in net assets."

**§ 210.3–19 [Amended]**

6. By amending § 210.3–19(a) (2) and (d) to replace references to "changes in financial position" with "cash flows".

**§ 210.4–08 [Amended]**

7. By amending § 210.4–08 to add paragraph (h)(3) as follows:

(h) * * *

(3) Paragraphs (h)(1) and (2) of this section shall be applied in the following manner to financial statements which reflect the adoption of Statement of Financial Accounting Standards No. 96, *Accounting for Income Taxes.*

(i) The disclosures required by paragraph (h)(1)(ii) and by the parenthetical instruction at the end of paragraph (h)(1) and by the introductory sentence of paragraph (h)(2) of this section shall not apply.

(ii) The instructional note between paragraphs (h)(1) and (2) and the balance of the requirements of paragraphs (h)(1) and (2) shall continue to apply.

(iii) Such financial statements shall include in a footnote the amount of each significant component of deferred tax liability or asset.

8. By amending § 210.4–08(k)(1) to replace the reference to "changes in financial position" with "cash flows".

9. By revising paragraph (i)(4)(i) of § 210.4–10 to read as follows:

**§ 210.4–10 Financial accounting and reporting for oil and gas producing activities pursuant to the Federal securities laws and the Energy Policy and Conservation Act of 1975.**

* * * * *

(i) *Application of the full cost method of accounting.*

* * * * *

(4) *Limitation on capitalized costs.* (i) For each cost center, capitalized costs, less accumulated amortization and related deferred income taxes, shall not exceed an amount (the cost center ceiling) equal to the sum of:

(A) The standardized measure of discounted future net cash flows computed in accordance with the provisions of paragraph 30 of Statement of Financial Accounting Standard No. 69; plus

(B) The cost of properties not being amortized pursuant to paragraph (c)(3)(ii) of this section; plus

(C) The lower of cost or estimated fair value of unproven properties included in the costs being amortized.

* * * * *

10. By removing and reserving paragraph (k) of § 210.4–10.

11. By amending § 210.7–04 by removing paragraph 12, by redesignating paragraphs 13 through 18 as paragraphs 14 through 19, by redesignating paragraphs 4 through 11 as paragraphs 6 through 13, and redesignating paragraphs 2 and 3 as paragraphs 3 and 5, by adding new paragraphs 2 and 4 and revising newly redesignated paragraphs 12 and 13 as follows:

**§ 210.7–04 Income statements.**

* * * * *

2. *Other consideration.* Other consideration should include amounts assessed or received to compensate the insurer for services provided in connection with insurance or other long duration contracts.

* * * * *

4. *Realized investment gains and losses.* Disclose the following amounts:

(a) Realized investment gains and losses, which shall be shown separately regardless of size.

(b) For each period for which an income statement is provided indicate whether realized gains and losses includes amounts allocable to policyholders and separate accounts. Separately disclose the amounts of realized gains and losses allocable to policyholders and separate accounts.

(c) The method followed in determining the cost of investments sold (e.g., "average cost", "first-in, first-out", or "identified certificate") shall be disclosed.

(d) For each period for which an income statement is filed, include in a note an analysis of realized and unrealized investment gains and losses on fixed maturities and equity securities. For each period, state separately for fixed maturities [see § 210.7-03.1(a)] and for equity securities [see § 210.7-03.1(b)] the following amounts: (1) Realized investment gains and losses, (included in § 210.7-04.3(a)), and (2) the change during the period in the difference between value and cost. The change in the difference between value and cost shall be given for both categories of investments even though they may be shown on the related balance sheet on a basis other than value.

* * * * *

12. Equity in earnings of unconsolidated subsidiaries and 50% or less owned persons. State, parenthetically or in a note, the amount of dividends received from such persons. If justified by the circumstances, this item may be presented in a different position and a different manner. (See § 210.4-01(a).)

13. Income or loss from continuing operations.

* * * * *

12. By amending § 210.9-03 by revising paragraph 7, introductory text, to read as follows:

**§ 210.9-03 Balance sheets.**

* * * * *

7. *Loans.* Disclose separately: (1) Total loans, (2) the related allowance for losses, (3) unearned income. Parenthetically disclose the amount of net deferred origination fees and costs included in the loan balance.

* * * * *

13. By revising § 210.10-01(a)(4) to read as follows:

**§ 210.10-01 Interim financial statements.**

(a) * * *

(4) The statement of cash flows may be abbreviated starting with a single figure of net cash flows from operating activities and showing changes in investing and financing cash flows individually only when they exceed 10% of the average of net cash flows from operating activities for the most recent three years. Information about individual noncash investing and financing activities may also be abbreviated by reporting them in related disclosures only when they exceed 10% of the above mentioned average. Notwithstanding this test, § 210.4-02 applies and *de minimis* amounts, therefore, need not be shown separately. Separate disclosure shall be made in the statement or in a footnote of the amount of interest and income taxes paid.

* * * * *

14. By amending § 210.10-01(c) (3) and (4) to revise the references to "changes in financial position" to "cash flows".

**§ 210.12-04 [Amended]**

15. By amending § 210.12-04(a) to revise the reference to "changes in financial position" to "cash flows".

**§ 210.12-16 [Amended]**

16. By amending § 210.12-16 to revise the caption under Column F of this schedule to read "Insurance premiums and other consideration (captions 1 and 2)", to revise the caption under Column G to read "Net Investment Income (caption 3)" (footnote 3 remains), to revise the caption under Column H to read "Benefits, claims, losses and settlement expenses (caption 6)" and to revise footnote 4 to the schedule to read, "The total of columns I and J should agree with the amount shown for income statement caption 8."

## PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

17. The authority citation for Part 239 continues to read in part as follows:

Authority: The Securities Act of 1933, 15 U.S.C. 77a, *et seq.* * * *

**§ 239.28 [Amended]**

18. By amending Form S-18 (reference in § 239.28) ITEM 21(c) and 21(f) to replace the reference to "Changes in Financial Condition" with "Cash Flows".

Note: Form S-18 does not appear in the Code of Federal Regulations.

**§ 239.90 [Amended]**

19. By amending Form 1-A (referenced in § 239.90) Part II ITEM 13(b) to replace the reference to "changes in financial condition" with "cash flows".

## PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

20. The authority citation for Part 240 continues to read, in part, as follows:

Authority: Sec. 23, 48 Stat. 901, as amended (15 U.S.C. 78w) * * *

**§§ 40.13e-100, 240.13e-101, 24.14a-3 and 240.17a-5 [Amended]**

21. By amending the following sections by replacing references to "changes in financial position" with "cash flows".

§ 240.13e-100 Item 14(a)(2)
§ 240.13e-101 Item 7(a)(2)
§ 240.14a-3(b)(1)
§ 240.17a-5(d)(2)
§ 240.17a-5(g)(1)

## PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

22. The authority citation for Part 249 continues to read, in part, as follows:

Authority: The Securities Exchange Act of 1934, 15 U.S.C. 78a, *et seq.* * * *

23. By amending Form 20-F (referenced in § 249.220f) Item 17(c) to redesignate paragraph (2) as paragraph (3) and Item 18(c) to redesignate paragraphs (2) and (3) as paragraphs (3) and (4) and by adding new Items 17(c)(2) and 18(c)(2) both to read as follows:

**§ 249.220f Form 20-F, registration of securities of foreign private issuers pursuant to section 12(b) or (g) or annual reports pursuant to sections 13 and 15(d).**

* * * * *

Items 17 and 18

(c) * * *

(2) If financial statements are prepared under a comprehensive body of accounting principles that does not include a requirement for a statement of changes in financial position or a statement of cash or funds flow, the basic financial statements shall include a statement of cash flows that meets the requirements of U.S. generally accepted accounting principles. If the financial statements are prepared under a comprehensive body of accounting principles that includes a requirement for a statement of cash or funds flow that differs from the requirements under U.S. generally accepted accounting principles, cash flow information that is substantially similar to the requirements under U.S. generally accepted accounting principles may be presented in a separate statement of cash flow or in a footnote.

**§ 249.310 [Amended]**

24. By amending Form 10-K (referenced in § 249.310) Item B(a)(2) to replace the reference to "changes in financial condition" with "cash flows".

## PART 259—FORMS PRESCRIBED UNDER THE PUBLIC UTILITY HOLDING COMPANY ACT OF 1935

25. The authority citation for Part 259 continues to read, in part, as follows:

Authority: The Public Utility Holding Company Act of 1935, 15 U.S.C. 79a *et seq.* * * *

**§ 259.5s [Amended]**

26. By amending Form U5S (referenced in § 259.5s) Item 9 to replace the reference to "changes in financial condition" with "cash flows".

## PART 274—FORMS PRESCRIBED UNDER THE INVESTMENT COMPANY ACT OF 1940

27. The authority citation for Part 274 continues to read, in part, as follows:

**Authority:** The Investment Company Act of 1940, 15 U.S.C. 80a-1, *et seq.* * * *

28. By revising Form N-4 (referenced in § 274.11c) Item 23(a)(iii) and (iv) to read as follows:

**§ 274.11c Form N-4, registration statement of separate accounts organized as unit investment trusts.**

* * * * *

Item 23. Financial Statements

(a) * * *

(i) * * *

(ii) * * *

(iii) An audited statement of cash necessary to comply with generally accepted accounting principles.

(iv) Audited statements of changes in net assets conforming to the requirements of Rule 6-09 of Regulation S-X (17 CFR 210.6-09) for the two most recent fiscal years.

* * * * *

By the Commission.

**Jonathan G. Katz,**

*Secretary.*

February 17, 1989.

**Regulatory Flexibility Act Certification**

I, David S. Ruder, Chairman of the Securities and Exchange Commission, hereby certify, pursuant to 5 U.S.C. 605(b) that the proposed amendments to certain rules, forms and policies contained in Securities Act Release No. 33-6818, if adopted will not have a significant economic impact on any entity subject to its provisions and, therefore, will not have a significant economic impact on a substantial number of small entities. The amendments will conform Regulation S-X and the Codification of Financial Reporting Policies with accounting standards recently adopted by the Financial Accounting Standards Board. Registrants are already subject to these standards and, accordingly, the proposed amendments would not impose any new burden on them.

David S. Ruder,

*Chairman.*

February 17, 1989.

[FR Doc. 89-4330 Filed 2-24-89; 8:45 am]

BILLING CODE 8010-01-M

## DEPARTMENT OF THE TREASURY

## Customs Service

## 19 CFR Part 177

## Certain Administrative Procedures

**AGENCY:** Customs Service, Treasury.

**ACTION:** Proposed rule.

**SUMMARY:** In an effort to enhance and expedite its dealings with the importing public, Customs is proposing changes to Part 177, Customs Regulations, regarding certain existing administrative procedures as well as developing new procedures. In this document, Customs is proposing new procedures to promote nationwide uniformity, as well as a new district rulings program which allows, as of January 1, 1989, commercial importers to receive advance binding rulings at Customs districts on tariff classification under the Harmonized Tariff Schedule of the United States.

Further, this document proposes to clarify certain other provisions of the regulations. The proposed clarifications concern the circumstances under which the effective date of a Customs ruling can be delayed in recognition of an importer's reliance on a previous, more favorable ruling and the obligations of a recipient of a tariff classification ruling letter, if entry of merchandise described in the ruling letter is subsequently made. This document also proposes to remove the "clearly wrong" test as the standard by which Customs determines whether certain established and uniform practices should be changed.

The procedures proposed in this document to promote uniformity are drafted to comply with the Anti-Drug Abuse Amendments Act of 1988.

**DATE:** Comments must be received on or before March 29, 1989.

**ADDRESS:** Written comments (preferably in triplicate) may be addressed to and inspected at the Regulations and Disclosure Law Branch, Room 2119, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, DC 20229. Comments relating to the information collection aspects of the proposal should be addressed to Customs, as noted above, and also to the Office of Information and Regulatory Affairs, Attention: Desk Officer for U.S. Customs Service, Office of Management and Budget, Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** John T. Roth, Commercial Rulings Division (202) 566-5868.

**SUPPLEMENTARY INFORMATION:**

**Background**

The administrative rulings program administered by the Customs Service provides a means by which commercial importers can import their products with some certainty regarding Customs treatment of the importation. With the passage of the Omnibus Trade and Competitiveness Act of 1988 (Pub. L. 100-418) and the replacement of the Tariff Schedules of the United States with the Harmonized Tariff Schedule of the United States (HTSUS), Customs is experiencing a far greater use of the administrative rulings program than ever before.

Accordingly, Customs is proposing changes in its ruling program to accommodate its increased use by importers, to improve Customs responsiveness to the ruling requests received, and to promote greater uniformity in the decisions being issued. One of these proposed changes is the district rulings program which became effective on January 1, 1989. This program, which is described below, is designed to permit importers to receive binding rulings from Customs districts for classification questions under the HTSUS On an expedited basis.

Another program proposed in this document that will provide greater certainty for commercial importers is a procedure to ensure uniformity in decisions made by Customs officers.

Among the other proposals discussed in greater detail below is a procedure under which the effective date of a Customs ruling can be delayed in recognition of an importer's reliance on a previous, more favorable, Customs decision; a clarification of the obligations of a recipient of a tariff classification ruling letter in the event entry of merchandise described in the ruling letter is subsequently made; a clarification of the extent to which previously-issued rulings can be the subject of a request for internal advice; and the removal of the "clearly wrong" test as the standard by which Customs determines whether certain established and uniform practices should be changed.

**District Rulings Program**

With the advent of the Harmonized Tariff Schedule of the United States (HTSUS), a new tariff classification system which became effective on January 1, 1989, the need for commercial importers to receive binding tariff classification advice on an expeditious basis will be greatly increased.

Accordingly, Customs instituted on January 1, 1989, a program to allow importers to apply in writing for an advance binding tariff classification under HTSUS at the Customs district where the merchandise will be imported or at any other district where the importer would have reason to do business. All rulings issued under this program are binding for the recipient at all ports of entry.

Upon receipt of an application, local import specialists will review the classification request for sufficiency. A request must include all the information prescribed in § 177.2(b)(1), (2)(i) and (ii) and (5), Customs Regulations (19 CFR 177.2(b)(1), (2)(i) and (ii), and (5)). In addition, the importer must provide the

name of the manufacturer and seller (if available), the country of origin and the importer of record number which will be used at entry. No more than 5 items may be included in any request.

If the application is sufficient, the local import specialist will add local advice and forward the application to national import specialists at New York. The target turn-around time for a binding ruling is 30 days, or 120 days if Headquarters must be involved. If revocation or other correction to the ruling must be made later, any adverse change will not be applied for up to 90 days provided the recipient can show detrimental reliance on the original ruling.

Districts may not be asked to reconsider rulings issued by the same or another Customs office. Requests for reconsideration of a ruling issued by a district must be directed to the Director, Commercial Rulings Division, U.S. Customs Service, Washington, DC 20229-0001. The rulings issued by Customs districts may also be protested under the provisions of Part 174 of the Customs Regulations. The regulations amendments proposed below will ensure that except as noted above, all portions of Part 177 of the Customs Regulations which relate to tariff classification decisions are applicable to rulings issued under the district rulings program.

Customs recognizes that the Customs Regulations now indicate that binding rulings may only be issued by Headquarters or the Regional Commissioner, New York. Accordingly, the institution of this program requires that amendments be made to various sections of Part 177, Customs Regulations (19 CFR Part 177) to reflect that prospective tariff classification rulings may also be issued by Customs districts. Sections 177.0, 177.1, 177.2, 177.3, 177.4, 177.8, 177.9 and 177.11 (19 CFR 177.0, 177.1, 177.2, 177.3, 177.4, 177.8, 177.9 and 177.11), are all proposed to be amended to expand the authority to issue prospective tariff classification rulings. Further, it is proposed to amend § 177.2(b)(2)(A) to limit individual requests for rulings to district offices to five merchandise items.

Customs began this district ruling program as of January 1, 1989. Although the amendments to the regulations are set forth below in the form of proposals, the program began on a trial basis, in order to serve the increased need for rulings created by the implementation of the HTSUS. Inasmuch as the program bestows a right upon the importing public and creates no burden, Customs sees no reason to delay the program's implementation. After gaining experience with the district ruling program, Customs will determine whether it should be continued and, if so, make whatever program adjustments are appropriate.

**Uniformity of Customs Officers' Decisions**

Section 7361(c) of the Anti-Drug Abuse Amendments Act of 1988 (Title VI, Pub. L. 100-690) requires the Secretary of the Treasury to promulgate regulations to provide for nationwide uniformity of certain decisions made by U.S. Customs Service officers and to establish procedures by which certain parties affected by the lack of such uniformity may have the alleged inconsistencies resolved.

The number of Customs Service personnel charged with decision-making responsibilities affecting the importation of merchandise at the various ports of entry in the United States is substantial. Notwithstanding the existence of a variety of programs and procedures designed to foster uniformity in the decisions it makes, Customs recognizes that inconsistent decisions occur and will inevitably continue to occur.

Through the Customs Service's Customs Information Exchange in New York, a longstanding program brings nationwide inconsistencies ("differences") in the tariff classification of imported merchandise to the attention of Customs Headquarters in Washington for resolution. However, notwithstanding the high priority given to resolving these inconsistencies, the process of identification, documentation, and resolution usually takes many months.

The manner and degree of merchandise examination and inspection by the Customs Service upon importation is determined by a variety of factors, including the nature of the merchandise, the country of origin, countries through which transported and/or country of export, the manufacturer and the compliance history of the importer. Although nationwide inspection/examination guidelines are issued from time to time, the effective enforcement by the Customs Service of the tariff and other laws it is charged with enforcing requires that these guidelines be applied with local discretion and be augmented by random examinations in order that no importation ever be assured beforehand that it will be exempt from physical examination. Nevertheless, the Customs Service realizes that the decision to examine merchandise at one port while entry of identical merchandise is permitted at another port without examination may be perceived as an inconsistency.

The Customs Service recognizes that even the small number of real or apparent inconsistencies that occur may pose immediate and grave consequences to the parties directly involved, as well as to the businesses and enterprises whose livelihood depends on the utilization of the particular import facilities and services at the port where the inconsistencies are alleged to exist. Moreover, insofar as the assessment of Customs duties is concerned, uniformity is mandated by Article 1, Section 8 of the Constitution of the United States. The Customs Service therefore proposes to establish a procedure whereby alleged inconsistencies in decisionmaking may be brought directly to the attention of Customs Headquarters by affected parties for expedited resolution.

The regulations proposed below permit both (1) port authorities and (2) any party entitled to either protest a decision of the Customs Service under the Protest procedures set forth in sections 514 and 515 of the Tariff Act of 1930, as amended (19 U.S.C. 1514, 1515) or utilize the Domestic Interested Party petition procedures set forth in section 516 of the Tariff Act of 1930, as amended (19 U.S.C. 1516), to petition the Customs Service for resolution of an inconsistency or lack of uniformity alleged to exist in: (1) A decision of a Customs officer permitted to be protested by section 514(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1514(a)) or (2) decisions to conduct intensified examinations or inspections of merchandise at various ports of entry. Section 514(a) provides the decisions of Customs officers relating to the following are protestable: (1) The appraised value of merchandise; (2) the classification and rate and amount of duties chargeable; (3) all charges or exactions of whatever character within the jurisdiction of the Secretary of the Treasury; (4) the exclusion of merchandise from entry or delivery or a demand for redelivery to Customs custody under all but one provision (section 1337) of the Customs laws; (5) the liquidation or reliquidation of an entry, or any modification thereof; (6) the refusal to pay a claim for drawback; and (7) the refusal to reliquidate an entry under 19 U.S.C. 1520.

In the case of decisions of the type permitted to be protested under section 514(a) of the Tariff Act, the petition must be filed within the time period prescribed by section 514(c)(2) for the filing of a protest with respect to the later of the inconsistent decisions

complained of. In the case of other decisions permitted to be the subject of a petition under this procedure, the petition must be filed within ninety (90) days of the most recent such decision.

The petitioning party will be required to furnish information sufficient to document that apparent inconsistencies exist. In the case of entries of merchandise alleged to have been treated inconsistently, the competing entries must be identified as to port of entry, date, and entry number and the merchandise must be fully described (including brand names, when present and samples, if possible) in the manner set forth in §§ 177.2(b)(1),(b)(2)(ii), and (b)(3) of the Customs Regulations (19 CFR 177.2 (b)(1), (b)(2)(ii), and (b)(3)) for tariff classification rulings. In the case of other alleged inconsistencies, the competing entries or other transactions or events must be described in sufficient detail that the Customs Service may quickly verify with the Customs field officials involved that the facts are as alleged.

In the case of alleged inconsistencies in the inspection or examination of merchandise, the petitioning party will be required to furnish information sufficient to document that a pattern of inconsistency exists. A "pattern of inconsistency" would exist where three or more instances were documented in which inspections or examinations were conducted within a particular port that appear inconsistent with inspection or examination decisions of another port or ports when substantially identical shipments (*i.e.*, shipments involving the same importer, manufacturer, commodity, and country of origin) are involved.

In the case of decisions involving valuation of merchandise, it should be noted that differences in the appraised value of identical or substantially similar merchandise are not necessarily the result of inconsistent decisions by the Customs Service. Allegations of inconsistencies in the valuation of merchandise must demonstrate that the bases of appraisement set forth in 19 U.S.C. 1401a have been inconsistently applied.

Petitioners failing to provide adequate information to proceed with verification will be so advised; the petitions will not be considered properly filed until the required information is provided. When multiple petitions are received regarding the same alleged inconsistencies, only the first properly filed petition will be processed. The other petitions will be returned to the senders with a copy of the petition accepted for processing and advice that the inconsistencies described in the petition being returned will be resolved in accordance with the decision made on the accepted petition.

Upon receipt of a properly filed petition, the Customs Service will immediately verify the facts alleged therein and, upon verification, will publish notice in the **Federal Register** that the petition has been received, describing the inconsistency complained of and permitting fifteen (15) days for public comment. In order to protect business information which may be confidential, the actual text of the petition received will not be published. After analysis of the public comment received, the Customs Service will issue a decision to the petitioner, transmitting copies of the port(s) involved, and will publish a summary of that decision in the **Federal Register** and *Customs Service Bulletin*. Unless otherwise provided therein, the decision will be effective immediately and, where applicable, applied to all entries for which liquidation is not final. (See Delaying the effective date, below). All decisions issued in response to a petition will be consistent with already existing established and uniform practices as that term is used in § 315(d) of the Tariff Act of 1930, as amended (19 U.S.C. 1315(d)). The procedure set forth in § 177.10(c), Customs Regulations (19 CFR 177.10(c)), must still be followed before a change of practice can be effected. Further, Customs will not consider any decision issued in response to a petition (or the publication of a summary thereof in the **Federal Register** and *Customs Bulletin*) to create an established and uniform practice.

If the petitioning party is one entitled to file a protest under section 514 of the Tariff Act and either of the competing decisions complained of could otherwise be the subject of a protest under that section, then the response issued by Customs Service Headquarters to a petition filed under the procedure proposed in this document shall be applied to any protest filed with respect to that same decision by the same or another party, and the protest shall be allowed or denied accordingly. Similarly, if the petitioning party is one entitled to file a domestic interested party petition under section 516 of the Tariff Act and either of the competing decisions complained of could otherwise be the subject of a petition under that section, then the response of Customs Service Headquarters under the procedure below shall also be deemed a response to a request for tariff classificaiton, value, and/or rate of duty information under Subpart A of Part 175 of the Customs Regulations (19 CFR Part 175, Subpart A).

The response to a petition filed under the procedures set forth below shall not itself be protestable.

**Delaying the Effective Date**

A principal purpose of the Customs Service administrative rulings program, set forth in Part 177 of the Customs Regulations (19 CFR Part 177) is to provide an element of certainty to Customs transactions. To this end, § 177.9(a), Customs Regulations (19 CFR 177.9(a)) provides that the rulings issued by the Customs Service under that part represent the official position of the Customs Service and are binding on all Customs Service personnel until modified or revoked.

The Customs Regulations (19 CFR Part 177) are generally effective on the date they are issued. However, the Customs Service had, in the years prior to May 1986, occasionally delayed the effective dates of certain rulings it issued which modified or revoked earlier rulings issued to the same party. Such relief was provided by the Customs Service upon request by the recipient of the ruling and the presentation of evidence by the party tending to demonstrate, to the satisfaction of the Customs Service, that entries or other Customs transactions scheduled to occur after the date of the later ruling were arranged for in reliance on the earlier ruling. When a delay in the effective date of the later ruling was granted by the Customs Service, it was generally for a period of 90 days or less from the date of the later ruling, even though the recipient of the ruling may have been able to demonstrate that entries or other transactions that had been arranged for in reliance on the earlier ruling would continue to occur after that period.

On May 23, 1986, the U.S. Court of International Trade (CIT) held, in *National Corn Growers Association, et al.* v. *Baker, et al.*, Slip Op. 86–55, that the Customs Service had no authority to delay the effective dates of the administrative rulings it issues, including those which modify or revoke prior written rulings. This decision was appealed by the Government and the other defendants but, during the pendency of that appeal, the Customs Service provided for no more delays in the effective dates of its rulings.

On February 9, 1988, the U.S. Court of Appeals for the Federal Circuit (CAFC) reversed the holding of the CIT, noting that the Customs Service does possess the power to delay the effective dates of the written administrative rulings it issues. The CAFC noted that applying a new Customs Service position to transactions entered into in reliance on

a previous Customs Service position is tantamount to applying the new position retroactively. Judicial notice was taken of the Customs Service's longstanding practice of limiting the retroactive effect of changed rulings, the court endorsing the basic concept that the administration of the tariff laws involves the exercise of judgment and discretion (quoting from *Lousiana* v. *McAdoo*, 234 U.S. 627 (1914), at 633). The powers conferred by 19 U.S.C. 3 on the Secretary of the Treasury and his delegate, the Commissioner of Customs, in the collection of duties involve the exercise of discretion and judgment. *National Corn Growers Association, et al.*, v. *Baker, et al.*, Appeal Nos. 87-1147/49 and 87-1160, ——— F. 2d, ———, decided February 9, 1988.

The Customs Service believes that the questions raised in the aforementioned *National Corn Growers* litigation regarding its power to delay the effective dates of the administrative rulings it issues demonstrate the need for regulations defining that authority and the circumstances in which it will be used. Accordingly, it is proposed to amend § 177.9, Customs Regulations (19 CFR 177.9), to specify that, while the ruling letters the Customs Service issues will normally be effective on the date they are issued, the Customs Service may, from time to time, delay the effective dates of rulings which modify or reverse earlier written rulings or, in the absence of an earlier ruling, which modify the manner in which Customs has treated substantially identical transactions in the past.

It is proposed to complete the discussion currently set forth in § 177.9(d), Customs Regulations (19 CFR 177.9(d)), regarding ruling letters which modify or revoke earlier ruling letters, by adding a new paragraph (d)(3), to provide for a possible delay in the effective date of such ruling letters. The Customs Service may provide for the delay on its own initiative or it may act upon a request for a delay made by the recipient of the ruling. In the latter case, the Customs Service will ask for evidence that the recipient relied on the earlier ruling in arranging for transactions that are to take place after the date of issuance of the later ruling. A request for a delay in the effective date of a ruling will be answered in a separate ruling letter unless the Customs Service elects to address all such requests made with respect to that ruling in a notice published in the *Customs Bulletin*.

The Customs Service also proposes to add a new paragraph, (e) to § 177.9, Customs Regulations (19 CFR 177.9(e)), to provide for a similar delay in the event the Customs Service issues a ruling which, although the matter is not covered by an earlier ruling, modifies the treatment previously accorded to substantially identical transactions by the Customs Service. Affected parties must request that such a delay be granted and must include with that request information identifying the past transactions claimed to have been relied on as well as evidence of that reliance. As with the requests for a delayed effective date made under proposed § 177.9(d)(3), Customs Regulations (19 CFR 177.9(d)(3)), the Customs Service will respond to all such requests individually or by a general notice published in the *Customs Bulletin*.

The Customs Service will consider all relevant factors in determining whether, and to what extent, to delay the effective dates of the ruling letters described above. Where reliance is claimed based on the Customs Service treatment of past transactions, the Customs Service will carefully review those transactions to determine the extent to which the information and issues prompting the ruling letter were previously considered by the Customs Service in processing the transactions. The Customs Service will also consider the extent to which a party requesting a delay in the effective date of a ruling letter was aware, prior to the issuance of that letter, of the consideration by the Customs Service of the matter and the potential contents of the ruling letter.

**Obligations of Recipients of Letter Rulings**

Sectin 177.8(a)(2) of the Customs Regulations (19 CFR 177.8(a)(2)) presently requires that recipients of rulings from the Customs Service provide a copy of that ruling to the appropriate Customs Service field office at the time the Customs transaction described in that ruling takes place, or to otherwise alert the field office that a ruling has been received. Importers operating in a "paperless" entry environment under the Automated Commercial System (ACS) are required to set forth clearly in the information provided to the Customs Service that a ruling regarding the transaction has been received.

Implicit in the current regulations has been the requirement that, where the ruling received sets forth the tariff classification of merchandise to be imported, the subsequent, actual importation of that merchandise would be entered in accordance with the classification set forth in the ruling. However, since this requirement has not been expressly stated in the regulations, confusion may exist regarding whether recipients of tariff classification rulings who do not agree with the classification determination made by the Customs Service have the option of entering the merchandise described in the ruling under the classification they consider to be correct.

The Customs Service expends considerable resources in providing tariff classification rulings to the importing community in an effort to bring greater certainty and uniformity to the process of importing merchandise. All requests for rulings are given careful consideration by Customs officials having expertise in the tariff classification of the particular merchandise at issue and the determination ultimately reached represents the official position of the Customs Service. The expeditious processing of merchandise desired by both the importing community and the Customs Service clearly requires that any importer having knowledge of an official position of the Customs Service regarding the proper tariff classification of the particular merchandise he is entering follow that classification. It is clear that the recipient of a Customs Service ruling has such knowledge.

A requirement that the recipient of a Customs Service ruling enter his merchandise consistent with that ruling in no way diminishes the available avenues of administrative appeal. Requests for reconsideration of rulings issued by Customs Service districts and the New York Region may be made to Customs Service Headquarters pursuant to § 177.2(b)(2)(ii)(C), Customs Regulations (19 CFR 177.2(b)(2)(ii)(C). (During the pendency of such reconsideration, however, entries of merchandise must be made in accordance with the decision originally received.) Although disagreements as to the *proper application* of a ruling to a specific transaction may be the subject of a request for internal advice under § 177.11, Customs Regulations (19 CFR 177.11), requests for *reconsideration* of the ruling may not. Disagreements as to the proper classification of merchandise actually entered are also protestable under Part 174 of the Customs Regulations (19 CFR Part 174).

The Customs Service proposes to amend § 177.8(a)(2) of the Customs Regulations (19 CFR 177.8(a)(2)) to expressly set forth the obligation of an importer to enter his merchandise under a tariff classification consistent with that contained in any tariff classification ruling received by the importer from the Customs Service which is then in effect. The proposed amendment further

provides that an importer failing to do so risks rejections of his entry and the institution of such penalty proceedings as the Customs Service determines to be appropriate. Section 177.11(b)(1)(ii) of the customs Regulations would also be amended to clarify that requests for reconsideration of rulings by the recipient thereof are not properly the subject of a request for internal advice.

**Elimination of "Clearly Wrong Test"**

Section 177.10(b) of the Customs Regulations (19 CFR 177.10(b)) provides that no ruling may be published changing an established and uniform practice by imposing a higher rate of duty or charge on an article unless the practice is determined to be clearly wrong. The practices referred to include those created by virtue of the publication of a ruling in the *Customs Bulletin*.

It is a longstanding rule of Customs procedure that importers have a right to rely on administrative practices continued over a long period and that the Customs Service may not disturb such practices in the absence of compelling reasons for doing so. *United States* v. *Bayersdorfer & Co.*, 16 Ct. Cust. Appls. 43 (1928); *United States* v. *Electrolux Corporation*, 46 CCPA 143, C.A.D. 718 (1959). Although the Customs Service fully endorses this principle and will continue to follow it when considering any change of practice, the Customs Service believes that the "clearly wrong" standard presently set forth in the regulations is sufficiently subjective in application as to have little real meaning and, as such, is both confusing and unnecessary.

The Customs Service believes that the procedure set forth in the regulations for changing any established and uniform practice which imposes a higher rate of duty or charge—involving the publication in the **Federal Register** of the proposed change and the compelling reasons therefor, full consideration of all public comment received in response to that notice, and the delay of any change ultimately determined to be necessary for a period of 90 days after that determination—fully safeguards the importing public against arbitrary and unsupported changes in Customs position. Consequently, the proposal set forth below would remove the "clearly wrong" standard from § 177.10(b) of the Customs Regulations.

**Comments**

Before adopting these proposals, consideration will be given to any written comments (preferably in triplicate) that are submitted timely to Customs. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9:00 a.m. and 4:30 p.m. at the Regulations and Disclosure Law Branch, Room 2119, Customs Headquarters, 1301 Constitution Avenue, NW., Washington, DC 20229.

**Regulatory Flexibility Act**

Pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et. seq.*), it is certified that, if adopted, the proposed amendments will not have a significant economic impact on a substantial number of small entities. Accordingly, they are not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

**Executive Order 12291**

This document does not meet the criteria for a "major rule" as specified in E.O. 12291. Accordingly, no regulatory impact analysis has been prepared.

**Paperwork Reduction Act**

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget (OMB) for review in accordance with the Paperwork Reduction Act of 1980 (44 US.C. 3504(h)). Comments on the collection of information should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, attention: Desk Officer for U.S. Customs Service, with copies to the U.S. Customs Service at the address previously specified.

The collection of information in the regulation is in § 177.12. This information is required by Customs to be able to determine whether inconsistent decisions have been issued by Customs officers at different ports. Customs will use the information to verify the inconsistency alleged and evaluate the circumstances under which the alleged inconsistency occurred. The likely respondents are business or other for-profit organizations and small businesses or organizations.

Estimated total annual reporting and/or recordkeeping burden: 4208 hours

Estimated average annual burden per respondent and/or recordkeepers: .1666 or .50 hours depending on circumstances

Estimated number of respondents and recordkeepers: 10,100

Estimated annual frequency of responses: 1

Part 178, Customs Regulations (19 CFR Part 178), which lists the information collections contained in the regulations and control numbers assigned by OBM would be amended accordingly if the proposal is adopted.

**Drafting Information**

The principal author of this document was Harold M. Singer, Regulations and Disclosure Law Branch, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

**List of Subjects in 19 CFR Part 177**

Administrative practice and procedure.

**Proposed Amendments**

It is proposed to amend Part 177 of the Customs Regulations (19 CFR Part 177) as set forth below:

## PART 177—ADMINISTRATIVE RULINGS

1. The authority citation for Part 177, would continue to read as follows:

**Authority:** 19 U.S.C. 66, 1624; Pub. L. 96-39, 93 Stat. 144.

2. It is proposed to amend § 177.0 by revising its first sentence to read as follows:

**§ 177.0 Scope.**

This part relates to the issuance of rulings to importers and other interested persons by the United States Customs Services.* * *

3. It is proposed to amend § 177.1 by revising the second sentence of paragraph (a)(1), the third sentence of paragraph (b), and the first sentence of both paragraph (d)(1) and (d)(2) to read as follows:

**§ 177.1 General ruling practice and definitions.**

(a) *The issuance of rulings generally*—(1) *Prospective Transactions* * * * For this reason, the Customs Service will give full and careful consideration to written requests from importers and other interested parties for rulings or information setting forth, with respect to a specifically described transaction, a definitive interpretation of applicable law, or other appropriate information. * * *

(b) *Oral advice.* * * * However, oral inquiries may be made to Customs Service offices regarding existing rulings, the scope of such rulings, the types of transactions with respect to which the Customs Service will issue rulings, the scope of the rulings which may be issued, or the procedures to be

followed in submitting ruling requests, as described in this part.

* * * * *

(d) *Definitions* (1) A "ruling" is a written statement issued by the Customs Service that interprets and applies the provisions of the Customs and related laws to a specific set of facts.* * *

(2) An "information letter" is a written statement issued by the Customs Service that does no more than call attention to a well-established interpretation or principle of Customs law, without applying it to a specific set of facts. * * *

4. It is proposed to amend § 177.2 by revising the last sentence of paragraph (a), adding a new sentence to the end of paragraph (b)(2)(ii)(A), revising paragraph (b)(2)(ii)(B), revising the second and third sentence of paragraph (b)(2)(ii)(C) and revising the first sentence of paragraph (d) to read as follows:

**§ 177.2 Submission of ruling requests.**

(a) *Form.* * * * Requests for tariff classification rulings should be addressed to the Regional Commissioner of Customs, New York Region, Attn: Classification Ruling Requests, New York, New York 10048, or to any Area or District office of the Customs Service.

(b) *Content* * * *

(2) *Description of transaction.* * * *

(ii) Tariff Classification rulings. (A) * * * Individual requests for rulings submitted to Area or District offices will be limited to five (5) merchandise items, all of which must be of the same class or kind.

(B) Rulings issued by the New York Region or by other Area or District offices are limited to prospective transactions. Only the Headquarters Office will prepare final decisions under § 177.11 (Requests for Advice by Field Officers), or § 174.23 (Further Review of Protests), § 177.10 (Change of Practice), decisions under Part 175 of this Chapter (petitions under § 516, Tariff Act of 1930, as amended), decisions under § 177.12 (Inconsistent Customs decisions), and decisions under Policies and Procedures Manual Supplement 2126–01.

(C) * * * The Headquarters Office retains authority to independently review all tariff classification ruling letters issued by the New York Region and other Area and District Offices. If the importer or other person to whom a ruling letter is issued disagrees with the tariff classification set forth in a ruling issued by the New York Region or other Area or District offices, he may petition the Director, Commercial Rulings Division, U.S. Customs Service, Washington, D.C. 20229, for review of the ruling.

* * * * *

(d) *Requests for immediate consideration.* The Customs Service will normally process requests for rulings in the order they are received and as expeditiously as possible.

* * * * *

5. It is proposed to revise § 177.3 to read as follows:

**§ 177.3 Nonconforming requests for rulings.**

A person submitting a request for a ruling that does not comply with all of the provisions of this part will be so notified in writing, and the requirements that have not been met will be pointed out. Except in the case of ruling requests submitted to Area or District offices, such person will be given a period of thirty (30) days from the date of the notice (or such longer period as the notice may provide) to supply any additional information that is requested or otherwise conform the ruling request to the requirements referred to in the notice. The Customs Service file with respect to ruling requests which are not brought into compliance with the provisions of this part within the period of time allowed will be administratively closed and the request removed from active consideration until such time as the deficiencies cited in the notice are corrected. A request for a ruling that is removed from active consideration by reason of failing to comply with the provisions of this part may be treated as withdrawn. In the case of ruling requests made to Area or District offices, a failure to comply with the provisions of this part will result in the return of the ruling request with the notice specifying the deficiencies and such requests will not be considered as having been filed until such deficiencies are corrected.

**§ 177.4 [Amended]**

6. It is proposed to amend § 177.4(b) by removing second sentence.

7. It is proposed to amend § 177.4(d) by removing its last four words.

8. It is proposed to amend § 177.5 by revising the second sentence to read as follows:

**§ 177.5 Change in status of transaction.**

* * * In particular, the Customs Service office to which the request was made must be advised when any transaction described in the ruling request as prospective becomes current and under the jurisdiction of a Customs Service field office.

* * * * *

9. It is proposed to amend § 177.8 by revising the first sentence of paragraph (a)(1), all of paragraph (a)(2), and the last sentence of paragraph (a)(3) to read as follows:

**§ 177.8 Issuance of Rulings.**

(a) *Ruling letters.*—(1) *Generally.* The Customs Service will endeavor to issue a ruling letter setting forth a determination with respect to a specifically described Customs transaction whenever a request for such a ruling is submitted in accordance with the provisions of this part and it is in the sound administration of the Customs and related laws to do so. * * *

(2) *Submission of ruling letters to field offices.* Any person engaging in a Customs transaction with respect to which a ruling letter has been issued shall ascertain that a copy of the ruling letter is attached to the documents filed with the appropriate Customs Service office in connection with that transaction, or shall otherwise indicate with the information filed for that transaction that a ruling has been received. Any person receiving a ruling setting forth the tariff classification of merchandise shall set forth such classification in the documents or information filed in connection with any subsequent entry of that merchandise; the failure to do so may result in a rejection of the entry and the imposition of such penalties as may be appropriate. A ruling received after the filing of such documents or information shall immediately be brought to the attention of the appropriate Customs Service field office.

(3) *Disclosure of ruling letters.* * * * All ruling letters issued by the Customs Service wil be available, upon written request, for inspection and copying by any person (with any portions determined to be exempt from disclosure deleted).

* * * * *

10. It is proposed to amend § 177.9 by revising paragraph (a), revising the last sentence of (d)(2), and adding new paragraph (d)(3) before the concluding text and paragraph (e) after the concluding text to read as follows:

**§ 177.9 Effect of ruling letters; modification or revocation.**

(a) *Effect of ruling letters generally.* A ruling letter issued by the Customs Service under the provisions of this part represents the official position of the Customs Service with respect to the particular transaction or issue described therein and is binding on all Customs Service personnel in accordance with the provisions of this section until

modified or revoked. In the absence of a change of practice or other modification or revocation which affects the principle of the ruling set forth in the ruling letter, that principle may be cited as authority in the disposition of transactions involving the same circumstances. Generally, a ruling letter is effective on the date it is issued and may be applied to all entries which are unliquidated, or other transactions with respect to which the Customs Service has not taken final action on that date. See, however, paragraphs (d) and (e) (ruling letters which modify previous ruling letters or positions) and § 177.10(e) (ruling letters published in the *Customs Bulletin*).

* * * * *

(d) *Modification or revocation of ruling letters.* * * *

(2) *Effect of modification or revocation of ruling letters.* * * * Nothing in this paragraph will prohibit the retroactive modification or revocation of a fuling with respect to a transaction which was not prospective at the time the ruling was issued, inasmuch as such a transaction was not entered into in reliance on a ruling from the Customs Service.

(3) *Effective dates.* Generally, a ruling letter modifying or revoking an earlier ruling letter will be effective on the date it is issued. However, the Customs Service may, upon application or on its own initiative, delay the delivery date of such a ruling for a period of up to 90 days from the date of issuance. Such a delay may be granted with respect to the party to whom the ruling letter was issued or to any other party, provided such party can demonstrate to the satisfaction of the Customs Service that they reasonably relied on the earlier ruling to their detriment. All parties applying for a delay will be issued a separate ruling letter setting forth the period, if any, of the delay to be provided. In appropriate circumstances, the Customs Service may decide to make its decision, with respect to a delay, applicable to all affected parties, irrespective of demonstrated reliance; in this event, a notice announcing the delay will be published in the *Customs Bulletin* and individual ruling letters will not be issued.

(e) *Ruling letters modifying past Customs treatment of transactions not covered by ruling letters.*—(1) *General.* The Customs Service will from time to time issue a ruling letter covering a transaction or issue not previously the subject of a ruling letter and which has the effect of modifying the treatment previously accorded by the Customs Service to substantially identical transactions of either the recipient of the ruling letter or other parties. Although such a ruling letter will generally be effective on the date it is issued, the Customs Service may, upon application by an affeced party, delay the effective date of the ruling letter, and continue the treatment previously accorded the substantially identical transactions, for a period of up to 90 days from the date the ruling letter is issued.

(2) *Applications by affected parties.* In applying to the Customs Service for a delay in the effective date of a ruling letter described in paragraph (e)(1) of this section, an affected party must demonstrate to the satisfaction of the Customs Service that the treatment previously accorded by Customs to the substantially identical transactions was sufficiently consistent and continuous that such party reasonably relied thereon in arranging for future transactions. The evidence of past treatment by the Customs Service shall cover the 2-year period immediately prior to the date of the ruling letter, listing all substantially identical transactions by entry number (or other Customs assigned number), the quantity and value of merchandise covered by each such transaction (where applicable), the ports of entry, and the dates of final action by the Customs Service. The evidence of reliance shall include contracts, purchase orders, or other materials tending to establish that the future transactions were arranged based on the treatment previously accorded by the Customs Service.

(3) *Decision by Customs to grant delay.* The Customs Service will examine all factors relevant to the issue of reliance in determining whether, and for what period, to delay the effective date of a ruling letter described in paragraph (e)(1). In particular, the Customs Service will examine the past transactions on which reliance is claimed to determine whether there was an examination of the merchandise (where applicable) by the Customs Service or the extent to which those transactions were otherwise examined and analyzed by the Customs Service to determine the proper application of the Customs laws and regulatioins. In general, transactions involving small quantities or values, as well as informal entries and other entries or transactions which the Customs Service, in the interest of commercial facilitation and accommodation, processes expeditiously and without examination and/or import specialist review, will be given diminished weight in establishing the required history of consistent and continuous Customs treatment. Unless a notice covering all affected parties is published in the *Customs Bulletin*, each affected party applying for a delay in the effective date of the ruling letter will be advised in a separate ruling letter of the extent to which a delay in the effective date will be applied to their transactions.

**§ 177.10 [Amended]**

11. It is proposed to amend paragraph (b) of § 177.10 by removing the last sentence.

12. It is proposed to revise § 177.11(b)(1) to read as follows:

**§ 177.11 Requests for advice by field offices.**

* * * * *

(b) *Certain current transactions.*—(1) *When a ruling has been issued.*—(i) *Requests by field offices.* If any Customs Service office has issued a ruling letter with respect to a particular Customs transaction and the Customs Service field office having jurisdiction over that transaction believes that the ruling should be modified or revoked, the field office will forward to the Headquarters Office, pursuant to § 177.9(b)(1), a request that the ruling be reconsidered. The field office will notify the importer or other person to whom the ruling letter was issued, in writing, that it has requested the Headquarters Office to reconsider the ruling.

(ii) *Requests by importers and others.* If the importer or other person to whom a ruling letter is issued disagrees with the Customs Service field office having jurisdiction over the transaction to which the ruling relates as to the proper application of the ruling to the transaction, the field office will, upon receipt of a written request submitted in accordance with the procedure set forth in paragraph (b)(3) of this section, request advice from the Headquarters Office as to the proper application of the ruling to the transaction. Such advice may not be requested for the purpose of seeking reconsideration of a ruling with which the importer or other person to whom the ruling letter was issued disagrees.

* * * * *

13. It is proposed to add a new § 177.12 to Subpart A to read as follows:

**§ 177.12 Inconsistent Customs decisions.**

(a) *Generally.* Certain decisions made by Customs officials at one field location which are inconsistent with decisions being made by Customs officials at another location may be brought to the attention of Customs Headquarters for resolution by a petition filed by an interested party. The types of decisions which may be the subject of such a petition, a description

of the parties who qualify as interested parties, and the period of time in which the petition may be filed are set forth below.

(1) *Inconsistent decisions subject to petition.* The decisions which may be the subject of a petition include:

(i) Decisions described in section 514(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1514(a)), made with respect to the same, or substantially similar, merchandise; and

(ii) Repeated decisions to conduct intensified inspections or examinations of merchandise at ports of entry.

(2) *Interested parties.* The following parties shall be considered interested parties entitled to file a petition under this section:

(i) Parties described in section 514(c)(1) of the Tariff Act of 1930, as amended (19 U.S.C. 1514(c)(1)), as eligible to file a protest under section 514;

(ii) A port authority; and

(iii) An "interested party," as described in section 516(a)(2) of the Tariff Act of 1930, as amended (19 U.S.C. 1516(a)(2)).

(3) *Time for filing.* In the case of decisions described in section 514(a) of the Tariff Act, the petition must be filed within the time prescribed by section 514(c)(2) of the Tariff Act of 1930, as amended (19 U.S.C. 1514(c)(2)), for filing a protest with respect to the later (or latest) of the decisions which are the subject of the petition. In the case of decisions described in item (1)(ii) of this paragraph, the petition must be filed within ninety (90) days of the later (or latest) such decision.

(b) *Petition.* (1) *form.* The petition shall be in the form of a letter addressed to the Commissioner of Customs, Attention: Office of Regulations and Rulings, Washington, DC 20229–0001. Three copies of the petition should be submitted, if possible.

(2) *Content.* The petition should contain a complete description of the inconsistent decisions complained of, including the ports of entry (or other Customs office) where the decisions were made, entry numbers, and the dates (or approximate dates) such decisions were made. The information set forth in the petition must be sufficient to demonstrate the inconsistency of the decisions described and that the merchandise, or circumstances in which the allegedly inconsistent decisions were made, were substantially similar. In the case of repeated decisions regarding the inspection or examination of merchandise, the decisions must be sufficient in number to demonstrate a pattern of inconsistency not attributable to random selection. Petitions which do not contain information sufficient to permit the Customs Service to verify that the decisions described have occurred will not be considered properly filed and will be returned to the petitioner for additional information. Only one petition will be accepted by the Customs Service with respect to the decisions alleged to be inconsistent.

(i) *Tariff classification decision.* In the case of decisions involving the tariff classification of merchandise, the petition should also include, with respect to each of the decisions described, the information requested in § 177.2(b)(1) and (b)(2)(ii) of this Subpart, including a sample (see § 177.2(b)(3)).

(ii) *Other subjects addressable by administrative rulings.* In the case of other decisions involving subjects which could be addressed under the administrative rulings procedure provided for in §§ 177.1 through 177.10 of this Subpart, the information contained in § 177.2(b)(2), (b)(2)(iii) and/or (b)(2)(iv), as applicable, should be also furnished for each of the decisions addressed by the petition.

(c) *Publication and public comment.* Upon receipt of a properly filed petition, notice will be published in the Federal Register announcing the receipt of the petition and describing the decisions alleged to be inconsistent. Public comment on the petition will be permitted for a period of fifteen (15) days after publication. Public comment regarding the proper disposition of the petition shall be limited to that submitted in writing, either with the petition or in response to the Federal Register solicitation of public comment. Except in extraordinary circumstances, oral conferences will not be permitted.

(d) *Determination on petition; distribution and publication.* Within (15) days after the close of the period for public comment referred to in paragraph (c) of this section, the Customs Service will issue a decision to the petitioner addressing the inconsistency complained of. That decision will either conform the inconsistent decisions to the current views of the Customs Service as to the proper tariff classification or other disposition of the subject of those decisions or explain why no inconsistency exists. Copies of the decision to the petitioner will be transmitted directly to all ports (or other Customs offices) identified in the petition and will be distributed through the Customs Information Exchange or by other means to such other ports or offices as may be necessary to correct any inconsistency identifed. A summary of the decision will also be published in the Federal Register and the weekly *Customs Bulletin.*

(e) *Effective date.* Unless otherwise specified in the decision, a decision issued in response to a petition filed under this section will be effective immediately and, where applicable, applied to all entries for which liquidation is not final.

(f) *Effect on other procedures.* The filing of a petition under this procedure shall not preclude the petitioner or any other person entitled to do so from filing a protest or a domestic interested party petition regarding the same matter under the procedures set forth in sections 514–515 and 516 of the Tariff Act, and Parts 174 and 175 of this chapter, provided the applicable requirements set forth therein are complied with. However, the decision issued in response to the petition may serve as the basis for the disposition of any protest so filed, or as an information letter setting forth the position of the Customs Service pursuant to Subpart A of Part 175 of this chapter. The decision issued in response to a petition filed under this section is not itself a decision subject to protest under sections 514–515 of the Tariff Act and Part 174 of this chapter.

**Michael H. Lane,**

*Acting Commissioner of Customs.*

Approved: February 23, 1989.

**Salvatore R. Martoche,**

*Assistant Secretary of the Treasury.*

[FR Doc. 89–4594 Filed 2–24–89; 8:45 am]

BILLING CODE 4820–02–M

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Social Security Administration

### 20 CFR Part 416

**[Reg. No. 16]**

## Supplemental Security Income for the Aged, Blind, and Disabled; Payment of Benefits; Determinations, Administrative Review Process, and Reopening of Determinations and Decisions

**AGENCY:** Social Security Administration, HHS.

**ACTION:** Proposed rules.

**SUMMARY:** We are proposing rules to implement section 9109 of the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203, which amended section 1631(a)(4)(A) of the Social Security Act (the Act). Effective December 22, 1987, this provision increased the maximum emergency advance payment that can

be paid to an individual presumptively eligible for supplemental security income (SSI) benefits from $100 to an amount equal to the Federal benefit rate plus the State supplementary payment (if any) payable to an eligible individual who has no other income.

**DATE:** To be sure that your comments are considered, we must receive them no later than April 28, 1989.

**ADDRESSES:** Comments should be submitted in writing to the Commissioner of Social Security, Department of Health and Human Services, P.O. Box 1585, Baltimore, MD 21235, or delivered to 3-A-3 Operations Building, 6401 Security Boulevard, Baltimore, MD 21235, between 8:00 a.m. and 4:30 p.m. on regular business days. Comments received may be inspected during these same hours by making arrangements with the contact person shown below.

**FOR FURTHER INFORMATION CONTACT:** Dave Smith, Office of Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, Telephone 301-965-1758.

**SUPPLEMENTARY INFORMATION:** Section 1631(a)(4)(A) of this Act authorizes an emergency advance payment (EAP) to an individual who initially files for SSI benefits, is presumptively eligible for such benefits, and who is faced with a financial emergency. These expedited payments are made to meet financial emergencies before eligibility can be determined in cases in which eligibility is expected to be found. Before December 22, 1987, the maximum amount that could be advanced was $100 (or $200 for a couple). Effective December 22, 1987, the maximum EAP amount was raised to an amount equal to the Federal benefit rate plus any State supplemetary payment that would be payable to an eligible individual who has no other countable income. As before the amendment, because it is an advance against future benefits, an EAP is later deducted from the benefits due if the individual is determined to be eligible. We are also proposing revisions to § 416.520 which explain how the EAP is computed and, if applicable, recovered.

We have also proposed changes to § 416.502 to omit references to checks in the discussion on the manner of SSI payment, in order to accommodate direct deposits to financial institutions and to provide that payments may be made before the first day of a month under certain circumstances. We are also proposing a revision in § 416.1403 to change the term "emergencty cash advance" to "emergency advance payment."

**Regulatory Procedures**

*Executive Order No. 12291*

The Secretary has determined that this is not a major rule under the terms of Executive Order 12291 because no additional program or administrative costs are contemplated and the threshold criteria for a major rule are not otherwise met. Therefore, a regulatory impact analysis is not required.

*Paperwork Reduction Act of 1980*

These proposed regulations impose no new reporting or recordkeeping requirements subject to Office of Management and Budget clearance.

*Regulatory Flexibility Act*

We certify that these proposed regulations, if promulgated, will not have a significant economic impact on a substantial number of small entities because they affect only individuals and States. Therefore, a regulatory flexibility analysis as provided in Pub. L. 96-354, the Regulatory Flexibility Act, is not required.

(Catalog of Federal Domestic Assistance Program No. 13.807, Supplemental Security Program)

**List of Subjects in 20 CFR Part 416**

Administration practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Supplemental security income.

Dated: December 13, 1988.

**Dorcas R. Hardy,**

*Commissioner of Social Security.*

Approved: January 17, 1989.

**Otis R. Bowen,**

*Secretary of Health and Human Services.*

Part 416 of Chapter III of title 20 of the Code of Federal Regulations is proposed to be amended as follows:

## PART 416—[AMENDED]

### Subpart E—[Amended]

1. The authority citation for Subpart E of Part 416 continues to read as follows:

**Authority:** Secs. 1102, 1601, 1602, 1611(c), and 1631(a), (b), (d), and (g), of the Social Security Act; 42 U.S.C. 1381, 1381 (a), 1381(c), and 1383 (a), (b) (d), and (g).

2. Section 416.502 is revised to read as follows:

**§ 416.502 Manner of payment.**

For the month an individual first meets all eligibility requirements or reestablishes eligibility after a month of ineligibility, an SSI payment will be made on or after the day of the month on which the individual becomes eligible or reeligible to receive benefits. In all other months, a payment will be made on the first day of each month and represents payment for that month. If the first day of the month falls on a Saturday, Sunday, or legal public holiday, payments will be made on the first day preceding such day which is not a Saturday, Sunday, or legal public holiday. Unless otherwise indicated, the monthly amount for an eligible couple will be divided equally and paid separately to each individual. Section 416.520 explains emergency advance payments.

3. Section 416.520 is revised to read as follows:

**§ 416.520 Emergency advance payments.**

(a) *General.* Before we make a determination on an application, we may pay a one-time emergency advance payment to an individual who is presumptively eligible for SSI benefits and who has a financial emergency. The amount of this payment cannot exceed the Federal benefit rate (see §§ 416.410 through 416.414) plus the State supplementary payment, if any (see § 416.2020), which apply for the month in which payment is made. "Emergency advance payment" is defined in paragraph (b)(1) of this section. The actual payment amount is computed as explained in paragraph (c) of this section. An emergency advance payment is an advance of benefits expected to be due, that is recoverable as explained in paragraphs (d) and (e) of this section.

(b) *Definition of terms.* For purposes of this subpart—

(1) *"Emergency advance payment"* means a direct, expedited payment by a Social Security Administration district or branch office to an individual or spouse who is initially applying (see paragraph (b)(3) of this section) and has not been determined eligible, who is presumptively eligible (see paragraph (b)(4) of this section), and who has a financial emergency (see paragraph (b)(2) of this section).

(2) *"Financial emergency"* is the financial status of an individual who has insufficient income or resources to meet an immediate threat to health or safety, such as the lack of food, clothing, shelter, or medical care.

(3) *"Initially applying"* means the filing of an application (see § 416.310) which requires an initial determination of eligibility, such as the first application for SSI benefits or an application filed subsequent to a prior denial or termination of a prior period of eligibility for payment. An individual or spouse who previously received an emergency advance payment in a prior

period of eligibility which terminated may again receive such a payment if he or she reapplies for SSI and meets the other conditions for an emergency advance payment under this section.

(4) "*Presumptively eligible*" is the status of an individual or spouse who presents strong evidence of the likelihood of meeting the income and resources tests of eligibility (see Subparts K and L of this part), categorical eligibility (age, disability, or blindness), and technical eligibility (United States residency and citizenship or alien status-see Subpart P).

(c) *Computation of payment amount.* To compute the emergency advance payment amount, the maximum amount described in paragraph (a) of this section is compared to both the expected benefit payable for the month the payment is made (see paragraph (c)(1) of this section) and the amount the applicant requested to meet the emergency. The actual payment amount is no more than the least of these three amounts.

(1) In computing the emergency advance payment amount, we apply the monthly income counting and proration rules appropriate for the month in which the advance is paid, as explained in §§ 416.420 and 416.421.

(2) For a couple, we separately compute each member's emergency advance payment amount.

(d) *Recovery of emergency advance payment where eligibility is established.* The amount of an emergency advance payment is deducted from payment(s) certified to the United States Treasury when the individual or spouse is determined to be eligible. (See paragraph (e) of this section if the individual or spouse is determined to be ineligible.)

(e) *Disposition of emergency advance payments where eligibility is not established.* If a presumptively eligible individual (or spouse) or couple is determined to be ineligible, the emergency advance payment constitutes a recoverable overpayment. (See the exception in § 416.537(b)(1) when payment is made on the basis of presumptive disability or presumptive blindness.)

### Subpart N—[Amended]

4. The authority citation for Subpart N continues to read as follows:

Authority: Secs. 1102, 1631, and 1633 of the Social Security Act; 42 U.S.C. 1302, 1383, and 1383b; sec. 6 of Pub. L. 98-460, 98 Stat. 1802.

5. Section 416.1403 is amended by revising paragraphs (a)(2) and (b)(1) to read as follows:

**§ 416.1403 Administrative actions that are not initial determinations.**

(a) * * *

(2) An emergency advance payment (as defined in § 416.520(b)).

* * * * *

(b) * * *

(1) If you receive an emergency advance payment or presumptive disability or presumptive blindness payments, we will provide a notice explaining the nature and conditions of the payments.

* * * * *

[FR Doc. 89-4415 Filed 2-24-89; 8:45 am]

BILLING CODE 4190-11-M

## DEPARTMENT OF JUSTICE

### Office of the Attorney General

### 28 CFR Part 75

**[Order No. 1324-89]**

### Child Protection and Obscenity Enforcement Act of 1988; Record-Keeping Provisions

**AGENCY:** Department of Justice.

**ACTION:** Proposed rule.

**SUMMARY:** The Attorney General proposes to promulgate new regulations to implement the responsibility given to him under the Child Protection and Obscenity Enforcement Act of 1988 (Subtitle N of title VII of Pub. L. 100-690, to be codified at 18 U.S.C. 2257). These regulations specify the records that must be kept for material produced after August 17, 1989, that contains visual depictions made after February 6, 1978, of actual sexually explicit conduct, with respect to each performer in each such visual depiction. They also specify the form of the statement relating to location of records that must be affixed to every copy of any matter covered by these regulations, and the manner in which the statement is to be affixed. As contemplated by the statute, the relations provide additional standards governing compliance. The regulations specifically require that the records maintained include at least one photo identification document. This is designed to enhance the reliability of the identifications contained in the record.

**DATE:** Comments must be received by April 18, 1989.

**ADDRESS:** Comments should be sent to Acting Director, National Obscenity Enforcement Unit, Department of Justice, Washington, DC 20530.

**FOR FURTHER INFORMATION CONTACT:** Patrick Trueman at (202) 633-5780. This is not a toll-free number.

**SUPPLEMENTARY INFORMATION:** As required by the Regulatory Flexibility Act, it is hereby certified that the proposed rule will not have a substantial economic impact on small business entities. 5 U.S.C. 605(B). It is not a major rule within the meaning of Executive order No. 12291 of February 17, 1981.

**List of Subjects in 28 CFR Part 75**

Crime, Juvenile delinquency, Organization and functions (Government agencies).

By virtue of the authority vested in me by law, including 28 U.S.C. 509, 510 and 18 U.S.C. 2257(f), Title 28 of the Code of Federal Regulations is amended by adding a new Part 75 to read as follows:

## PART 75—CHILD PROTECTION AND OBSCENITY ENFORCEMENT ACT OF 1988; RECORD-KEEPING PROVISIONS

Sec.



Authority: 18 U.S.C. 1028(d), 2257.

**§ 75.1 Definitions.**

Terms used in this part shall have the meanings set forth in the Child Protection and Obscenity Enforcement Act of 1988, section 7501 et seq., Pub. L. 100-690, 102 Stat. 4485. In addition, as used in this part, the term "picture identification card" shall mean a document issued by a government entity or by a private entity, such as a school or a private employer, that bears the photograph and the name of the individual identified. An identification document can also be a picture identification card.

**§ 75.2 Maintenance of records.**

(a) All producers of books, magazines, films, videotapes or other matter that are produced, manufactured, published, duplicated, reproduced or reissued on or after August 17, 1989 and contain one or more visual depictions of actual sexually explicit conduct made after February 6, 1978 shall create and maintain the following records pertaining to each performer portrayed in each such visual depiction:

(1) Records showing the name, age and date of birth of each performer;

(2) Records showing any alias, maiden name, nickname, stage name or professional name of the performer;

(3) Records showing a copy of the identification document, such as a passport, birth certificate, selective service card, driver's license, or identification care issued by a state, from which the producer obtained the name and date of birth information about the performer;

(4) Records showing a copy of one picture identification card, such as a passport, driver's license, work identification card, school identification card or identification card issued by a state;

(5) Records showing the name, real or assumed, of each performer depicted in a depiction of actual sexually explicit conduct, indexed by the title or identifying number of the book, magazine, film, videotape or other matter.

(b) If the identification document required in paragraph (a)(3) of this section contains a picture, the producer need not keep a record of an additional picture identification card. In such a case, however, the producer shall keep records showing a copy of one additional form of identification. Other forms of identification which may be used include another identification document, another picture identification card, a credit card issued in the performer's name, a social security card, a marriage certificate, an immigration card, or a baptismal certificate.

**§ 75.3 Categorization of records.**

Records shall be categorized and retrievable according to all name(s) of each performer, including any alias, maiden name, nickname, stage name or professional name of the performer. Only one copy of each picture of a performer's picture identification card and identification document must be kept so long as they are categorized and retrievable according to any name, real or assumed, used by such performer.

**§ 75.75.4 Location of records.**

Any producer required to mtaintain records by this part shall store such records at the producer's primary place of business. The business address shall refer to a street address and not to a post office box number.

**§ 75.5 Inspection of records.**

Any producer, upon the request of any authorized representative of the Attorney General, shall make such records available for inspection.

**§ 75.6 Statement describing location of books and records.**

All books, magazines, films, videotapes, or other matter that are produced, manufactured, published, duplicated, reproduced or reissued after August 15, 1989 and contain one or more visual depictions of actual sexually explicit conduct made after February 6, 1978 shall contain a statement describing the location of the records described in this part. The statement shall contain the following information: the title of the book, magazine, film or videotape or, if there is no title, an identifying number; the date of production or of duplication, reproduction, or reissuance; and a street address at which the records described in this part can be found.

**§ 75.7 Location of the statement.**

All books and magazines shall contain the statement required in § 75.6 on the first page that appears after the front cover. All films and videotapes shall contain the statement within one minute from the start of the film or videotape and before the opening scene. The statement shall be shown for a sufficient duration to be capable of being read by the average viewer.

Date: February 21, 1989.

**Harold G. Christensen,**

*Acting Attorney General.*

[FR Doc. 89-4428 Filed 2-24-89; 8:45 am]

BILLING CODE 4410-01-M

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[FRL-3527-4]**

### Alternative Emission Control Plan For American Cyanamid Co.; Fortier Plant, Westwego, LA

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of proposed rulemaking; extension of the public comment period.

**SUMMARY:** November 18, 1988 (53 FR 46636), EPA invited comment on the proposed disapproval of the American Cyanamid Company Fortier Plant Alternative Emission Reduction Plan ("Bubble") as a revision to the Louisiana State Implementation Plan (SIP). At the request of American Cyanamid, in a letter dated December 13, 1988, EPA extended the public comment period until February 1, 1989, to allow additional time to develop comments on the issues presented in the proposed rulemaking. Subsequently, at the request of the State of Louisiana, in a letter dated January 31, 1989, EPA is extending the public comment period until February 16, 1989,[1] to allow the State additional time to respond to the issues presented in the proposed rulemaking.

**DATES:** Comments may be submitted to EPA at the address below, until February 16, 1989.[1]

**ADDRESSES:** Comments should be submitted to: Bill Riddle, State Implementation Plan Section (6T-AN), EPA Region 6, 1445 Ross Ave., Dallas, Texas 75202.

**FOR FURTHER INFORMATION CONTACT:** Bill Riddle at (214) 655-7214 or FTS 255-7214.

Dated: February 13, 1989.

**Joseph D. Winkler,**

*Acting Regional Administrator.*

[FR Doc. 89-4454 Filed 2-24-89; 8:45 am]

BILLING CODE 6560-50-M

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Parts 2 and 87

**[PR Docket No. 89-16; FCC 89-25; RM-6423]**

### Maritime Service; Amendment of the Frequency Allocation and Aviation Services Rules To Provide Frequencies for Use of Fully Operational Commercial Launch Vehicles

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule; correction.

**SUMMARY:** The Commission issued a Notice of Proposed Rule Making in the above-captioned proceeding on January 30, 1989 (Published February 23, 1989; 54 FR 7812). This document corrects the release date in the first paragraph under **"SUPPLEMENTARY INFORMATION"** to read "February 16, 1989" in lieu of "February 15, 1989".

**FOR FURTHER INFORMATION CONTACT:** Gayle Shifflett, Publications Branch, Office of the Secretary, (202) 632-4178.

**Donna R. Searcy,**

*Secretary.*

[FR Doc. 89-4576 Filed 2-24-89; 8:45 am]

BILLING CODE 6712-01-M

[1] This document was received by the Office of the Federal Register on February 22, 1989.

**47 CFR Part 73**

**[MM Docket No. 89-32, RM-6454]**

## Radio Broadcasting Services; Clarksville and Fort Smith, AR

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** This document requests comments on a petition filed on behalf of George T. Hernreich, licensee of Station KBBZ-FM, Channel 265A, Fort Smith, Arkansas, seeking the substitution of Channel 264C2 for Channel 265A and modification of its license accordingly. Additionally, Channel 295A is proposed as a substitute for Channel 263A at Clarksville, Arkansas, to accommodate the Fort Smith proposal. Reference coordinates utilized for Channel 264C2 at Forth Smith are 35-13-26 and 94-21-30, while those used for Channel 295A at Clarksville are 35-28-34 and 93-21-41.

**DATES:** Comments must be filed on or before April 10, 1989, and reply comments on or before April 25, 1989.

**ADDRESS:** Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Jacob W. Mayer, Esq., Farrow, Schildhause & Wilson, 1730 M St., NW., Suite 708, Washington, DC 20036.

**FOR FURTHER INFORMATION CONTACT:** Nancy Joyner, Mass Media Bureau, (202) 634-6530.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 89-32, adopted January 24, 1989 and released February 17, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

Federal Communications Commission.

**Steve Kaminer,**

*Deputy Chief, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 89-4407 Filed 2-24-89; 8:45 am]

**BILLING CODE 6712-01-M**

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**47 CFR Part 73**

**[MM Docket No. 89-25, RM-6570; RM-6587, RM-6646]**

## Radio Broadcasting Services; Algona, Forest City and Osage, IA

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Commission requests comments on three mutually exclusive petitions for rule making. Osage Broadcasting Company requests the substitution of Channel 224C2 for Channel 224A at Osage, Iowa, and the modification of its license for Station KOSG to specify the higher powered channel, as well as the substitution of Channel 297A for Channel 224A at Algona, Iowa, and the modification of KLGA Incorporated's license for Station KLGA to specify the alternate Class A channel. KLGA, Inc. requests the substitution of Channel 224C2 for Channel 224A at Algona, Iowa, the modification of its license for Station KLGA to specify operation on the higher powered channel along with the substitution of Channel 225A for Channel 224A at Osage, Iowa, and the modification of Station KOSG's license accordingly, Pilot Knob Broadcasting requests the substitution of Channel 297C2 for Channel 272A at Forest City, Iowa, and the modification of its license for Station KIOW accordingly.

**DATES:** Comments must be filed on or before April 10, 1989, and reply comments on or before April 25, 1989.

**ADDRESS:** Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Al Penfold, President, Osage Broadcasting Company, Box 180, Osage, Iowa 50461 (Petitioner for Osage); John R. Wilner, Esq., Bryan, Cave, McPheeters & McRoberts, 1015-15th Street, NW., Suite 1000, Washington, DC 20005 (Counsel to KLGA, Inc.); and Tony Coloff, President, Bald Knob Broadcasting, P.O. Box 308, Forest City, Iowa 50436 (Petitioner for Forest City).

**FOR FURTHER INFORMATION CONTACT:** Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Notice of Proposed Rule Making and Order to Show Cause, MM Docket No. 89-25, adopted January 24, 1989, and release February 17, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

Channel 224C2 or 225A can be allotted to Osage and Channels 224C2 or 297A can be allotted to Algona in compliance with the Commission's minimum distance separation requirements and can be used at the present transmitter sites of Stations KOSG and KLGA, respectively. The coordinates for Channels 224C2 and 225A at Osage are North Latitude 43-19-20 and West Longitude 92-51-22. The coordinates for Channels 224C2 and 294A at Algona are North Latitude 43-04-05 and West Longitude 94-12-08. Channel 297C2 can be allotted to Forest City with a site restriction of 22.0 kilometers (13.7 miles) south to avoid a short-spacing to Station KROC-FM, Channel 295C, Rochester, Minnesota, and to the proposed allotment of Channel 298C2 at Faribault, Minnesota (MM Docket 88-259). In accordance with Section 1.420(g) of the Commission's Rules, competing expressions of interest in use of Channel 224C2 at either Osage or Algona will not be accepted.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

Federal Communications Commission.

**Steve Kaminer,**

*Deputy Chief, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 89-4408 Filed 2-23-89; 8:45 am]

**BILLING CODE 6712-01-M**

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**47 CFR Part 73**

**[MM Docket No. 89-26, RM-6518]**

## Radio Broadcasting Services; Sisters, OR

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** This Commission requests comments on a petition by Schuyler H. Martin proposing the allotment of Channel 281A to Sisters, Oregon, as the community's first local FM service. Channel 281A can be allotted to Sisters in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. The coordinates for this allotment are North Latitude 44-17-30 and West Longitude 121-33-06.

**DATES:** Comments must be filed on or before April 10, 1989, and reply comments on or before April 25, 1989.

**ADDRESS:** Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: James M. Weitzman, Esq., Kaye, Scholer, Fierman, Hays & Handler, 901-15th Street NW., Suite 1100, Washington, DC 20005 (Counsel to Martin).

**FOR FURTHER INFORMATION CONTACT:** Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 89-26, adopted January 25, 1989, and released February 17, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

Federal Communications Commission.

**Steve Kaminer,**

*Deputy Chief, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 89-4404 Filed 2-24-89; 8:45 am]

**BILLING CODE 6712-01-M**

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**47 CFR Part 73**

**[MM Docket No. 89-31, RM-6479]**

## Radio Broadcasting Services; Comfort, TX

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** This document requests comments on a petition by Comfort Broadcasting Company, Inc., proposing the allotment of Channel 236C2 to Comfort, Texas, as that community's first local FM service. A site restriction of 4.8 kilometers (3.0 miles) west of the city is required. The coordinates are 29-57-53 and 98-57-54. Mexican concurrence is also required.

**DATES:** Comments must be filed on or before April 10, 1989, and reply comments on or before April 25, 1989.

**ADDRESS:** Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Christopher J. Reynolds, Esquire, Pepper, Martin, Jensen, Maichel and Hetlage, 1401 New York Avenue, NW., Washington, DC 20005 (Counsel for petitioner).

**FOR FURTHER INFORMATION CONTACT:** Patricia Rawlings, (202) 634-6530.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 89-31, adopted January 24, 1989, and released February 17, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complet text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

Federal Communications Commission.

**Steve Kaminer,**

*Deputy Chief, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 89-4406 Filed 2-24-89; 8:45 am]

**BILLING CODE 6712-01-M**

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**47 CFR Part 73**

**[MM Docket No. 89-30, RM-6419]**

## Radio Broadcasting Services; Floresville and Pearsall, TX

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** This document requests comments on a petition by Alfonso Bazan Gonzalez, d/b/a Wilson County Broadcasting Company, licensee of Station KWCB(FM), Channel 232A, Floresville, Texas, proposing the substitution of Channel 231C2 for Channel 232A at Floresville and the modification of its license to specify the higher class channel. In order to accomplish the substitution at Floresville, Channel 281A must be substituted for vacant but applied for Channel 231A at Pearsall, Texas. A site restriction of 27.9 kilometers (17.4 miles) west of Floresville is required at coordinates 29-13-34 and 98-25-55. Concurrence of the Mexican government is also required.

**DATES:** Comments must be filed on or before April 10, 1989, and reply comments on or before April 25, 1989.

**ADDRESSES:** Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Gene A. Bechtel, Esquire, Howard W. Simcox, Jr., Esquire, Bechtel, Borsari, Cole & Paxson, 2101 L Street, NW., Suite 502, Washington, DC 20037 (Counsels for petitioner).

**FOR FURTHER INFORMATION CONTACT:** Patricia Rawlings, (202) 634–6530.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 89–30, adopted January 24, 1989, and released February 17, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

Federal Communications Commission.

**Steve Kaminer,**

*Deputy Chief, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 89–4409 Filed 2–24–89; 8:45 am]

BILLING CODE 6712-01-M

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## 47 CFR Part 73

**[MM Docket No. 89–29, RM–6548]**

## Radio Broadcasting Services; Refugio, TX

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** This document requests comments on a petition by Sound Leasing, Inc., licensee of Station KZTX(FM), Channel 292A, Refugio, Texas, proposing the substitution of Channel 291C2 for Channel 292A and modification of its license to specify operation on the higher class co-channel. Channel 291C2 can be allotted consistent with the Commission's minimum separation requirements, at the city reference coordinates which are 28–18–18 and 97–16–30. Mexican concurrence is required.

**DATES:** Comments must be filed on or before April 10, 1989, and reply comments on or before April 25, 1989.

**ADDRESS:** Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Christopher J. Reynolds, Esquire, Peper, Martin, Jensen, Maichel and Hetlage, 1401 New York Ave., NW., Washington, DC 20005 (Counsel for petitioner).

**FOR FURTHER INFORMATION CONTACT:** Patricia Rawlings, (202) 634–6530.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 89–29, adopted January 24, 1989, and released February 17, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

Federal Communications Commission.

**Steve Kaminer,**

*Deputy Chief, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 89–4405 Filed 2–24–89; 8:45 am]

BILLING CODE 6712-01-M

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## DEPARTMENT OF THE INTERIOR

## Fish and Wildlife Service

## 50 CFR Part 20

## Migratory Bird Hunting on Federal Indian Reservations and Ceded Lands

**AGENCY:** U.S. Fish and Wildlife Service, Interior.

**ACTION:** Notice of intent; request for proposals from Indian tribes desiring special migratory bird hunting regulations for the 1989–90 hunting season.

**SUMMARY:** The purpose of this Notice of Intent is to request proposals from Indian tribes that wish to establish special migratory bird hunting regulations for the 1989–90 hunting season, under the guidelines implemented for this purpose in September 1985. A proposal must include the details described later in this document. The U.S. Fish and Wildlife Service (hereinafter the Service) also welcomes comments concerning this Notice of Intent.

**DATES:** Proposals and comments should be submitted as soon as possible and must be received by June 5, 1989.

**ADDRESSES:** All proposals and comments should be submitted to Director (FWS/MBMO), U.S. Fish and Wildlife Service, Department of the Interior, Room 634, Arlington Square, 18th and C Streets NW., Washington, DC 20240. A copy should be sent to the appropriate Service Regional Office at the address shown near the end of this document. Also, tribes that request special hunting regulations for tribal members on ceded lands should send a copy of the proposal to officials in the affected State(s).

**FOR FURTHER INFORMATION CONTACT:** Fant W. Martin, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, Room 634, Arlington Square, 18th and C Streets NW., Washington, DC 20240 [Telephone (703) 385–1714].

**SUPPLEMENTARY INFORMATION:**

### Background

Beginning with the 1985–86 hunting season, the Service has employed guidelines described in the June 4, 1985 **Federal Register** (at 50 FR 23467) to establish special migratory bird hunting regulations on Federal Indian reservations (including off-reservation trust lands) and ceded lands. The guidelines were developed in response to tribal requests for Service recognition of their reserved hunting rights, and for

some tribes, recognition of their authority to regulate hunting by both tribal and nontribal members throughout their reservations. The guidelines include possibilities for: (1) On-reservation hunting by both tribal and nontribal members, with hunting by nontribal members on some reservations to take place within Federal frameworks, but on dates different from those selected by the surrounding State(s); (2) on-reservation hunting by tribal members only, outside of usual Federal frameworks for season dates and length, and for daily bag and possession limits; and (3) off-reservation hunting by tribal members on ceded lands, outside of usual framework dates and season length, with some added flexibility in daily bag and possession limits. In all cases, the regulations established under the guidelines would have to be consistent with the March 10 to September 1 closed season mandated by the 1916 Migratory Bird Treaty with Canada. The guidelines are capable of application to those tribes that have reserved hunting rights on Federal Indian reservations (including off-reservation trust lands) and ceded lands. They also apply to establishing migratory bird hunting regulations for nontribal members on all lands within the exterior boundaries of reservations where tribes have full wildlife management authority over such hunting, or where the tribes and affected States othewise have reached agreement over hunting by nontribal members on non-Indian lands.

Tribes usually have the authority to regulate migratory bird hunting by nonmembers on Indian-owned reservation lands, subject to Service approval. The question of jurisdiction is more complex on reservations that include lands owned by non-Indians, especially when the surrounding States have established or intend to establish regulations governing hunting by non-Indians on these lands. In such cases, the Service encourages the tribes and States to reach agreement on regulations that would apply throughout the reservations. When appropriate, the Service will consult with a tribe and State with the aim of facilitating an accord. The Service also will consult jointly with tribal and State officials in the affected States where tribes may wish to establish special hunting regulations for tribal members on ceded lands.

One of the guidelines provides for the continuation of harvest of waterfowl and other migratory game birds by tribal members on reservations where it is a customary practice. The Service does not oppose this harvest, provided it does not take place during the closed season required by the 1916 Canadian Migratory Bird Treaty, and it is not so large as to adversely affect the status of the migratory bird resource. Prior to the 1987–88 and 1988–89 hunting seasons, the Service reached an agreement with the Mille Lacs Band of Chippewa Indians for hunting by tribal members on their lands in Minnesota. A similar agreement was reached with the Yankton Sioux Tribe in South Dakota for the 1988–89 hunting season. The Service is pleased with these accords and will continue to consult with tribes that wish to reach a mutual agreement on migratory bird hunting regulations for on-reservation hunting by tribal members.

The guidelines should not be viewed as inflexible. Nevertheless, the Service believes that they provide appropriate opportunity to accommodate the reserved hunting rights and management authority of Indian tribes while ensuring that the migratory bird resource receives necessary protection. The conservation of this important international resource is paramount. Use of the guidelines is not required if a tribe wishes to observe the hunting regulations established by the State(s) in which the reservation is located.

**Details Needed in Tribal Proposals**

Tribes that wish to use the guidelines to establish special hunting regulations for the 1989–90 hunting season must submit a proposal that includes: (1) The requested hunting season dates and other details regarding regulations to be observed; (2) harvest anticipated under the requested regulations; (3) methods that will be employed to measure or monitor harvest (mail-questionnaire survey, bag checks, etc.); (4) steps that will be taken to limit level of harvest, where it could be shown that failure to limit such harvest would impact seriously on the migratory bird resource; and (5) tribal capabilities to establish and enforce migratory bird hunting regulations.

The regulations that will be established for Indian tribes will include both early and late hunting seasons. The early season begins on September 1 each year and includes species such as mourning doves and white-winged doves. The late season usually begins on or near October 1 and includes most waterfowl species. Because final regulations for tribes for the 1989–90 hunting season must be established by September 1, 1989, the proposed and final rules for most tribal waterfowl seasons will be described in relation to the season dates, season length, and limits that will be permitted when final waterfowl hunting season frameworks are announced. For example, the daily bag and possession limits for ducks on most reservations in the Pacific Flyway will be shown as "Same as permitted Pacific Flyway States under final Federal frameworks." This procedure is necessary because the early season will be underway before final frameworks for the late season are announced. The final rule for tribes will include the actual season dates, bag limits, etc., for species included in the early season because the final Federal frameworks will be established in time to include them in the final rule for tribes. In some instances, specific waterfowl regulations for a particular tribe or reservation also may be shown because they will be within the final Federal frameworks that will be established. However, for the reasons shown above, final regulations for most tribes will not include exact details for waterfowl.

The Service notes that duck hunting regulations for the 1988–89 hunting season were much more restrictive than in recent years because of the serious decline in duck populations caused by a lengthy period of drought in the prairie region of Canada and the United States. The drought was especially severe in 1988, and several years of favorable environmental conditions probably will be required before ducks will be able to nest successfully again in many prairie areas. Consequently, for conservation purposes, duck hunting regulations likely will be conservative again in the 1989–90 hunting season, and tribes should bear this in mind when preparing proposals.

A tribe that desires the earliest possible opening of the waterfowl season should specify this in the proposal, rather than request a date that might not be within the final Federal frameworks. Similarly, unless a tribe wishes to set more restrictive regulations than Federal regulations will permit, the proposal should request the same daily bag and possession limits and season length for ducks and geese that Federal regulations will permit the States in the flyway in which the reservation is located.

The Service notes also that because of a long-term decline of mourning doves in the Western Management Unit, the 1988–89 hunting regulations for states in the unit were more restrictive than usual. Similar regulations likely will be established in the unit for this species

for the 1989–90 hunting season, with the aim of increasing the size of the population.

Pertinent details in proposals received from tribes will be published for public review in a later **Federal Register** document. Because of the time required for Service and public review, Indian tribes that desire special migratory bird hunting regulations for the 1989–90 hunting season should submit their proposals as soon as possible, but not later than June 5, 1989. Tribal inquiries regarding the guidelines and proposals should be directed to the appropriate Service Regional Office.

**Fish and Wildlife Service Regional Offices**

(Address Regional Director, U.S. Fish and Wildlife Service)

| States | Address | Telephone No. |
|---|---|---|
| California, Hawaii, Idaho, Nevada, Oregon, Washington | Lloyd 500 Bldg., Suite 1692, 500 NE. Multnomah Street, Portland, OR 97232. | 503/231-6118 |
| Arizona, New Mexico, Oklahoma, Texas | P.O. Box 1306, 500 Gold Avenue SW., Albuquerque, NM 87103 | 505/766-2321 |
| Iowa, Illinois, Indiana, Michigan, Minnesota, Missouri, Ohio, Wisconsin | Federal Bldg., Ft. Snelling, Twin Cities, MN 55111 | 612/725-3563 |
| Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee. | Richard B. Russell Fed. Bldg., Room 1200, 75 Spring Street SW., Atlanta, GA 30303. | 404/331-3588 |
| Connecticut, Delaware, Massachusetts, Maryland, Maine, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Virginia, Vermont, West Virginia. | One Gateway Center, Suite 700 Newton Corner, MA 02158 | 617/965-5100 |
| Colorado, Kansas, Montana, North Dakota, Nebraska, South Dakota, Utah, Wyoming. | P.O. Box 25486, Denver Federal Center, Denver, CO 80225 | 303/236-7920 |
| Alaska | 1011 E. Tudor Road, Anchorage, AK 99503 | 907/786-3542 |

## Authorship

The primary author of this Notice of Intent is Fant W. Martin, Office of Migratory Bird Management, working under the direction of Byron K. Williams, Acting Chief.

## List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Transportation, Wildlife

The rules that eventually may be promulgated for the 1989–90 hunting season are authorized under the Migratory Bird Treaty Act of July 3, 1918 (40 Stat. 755; 16 U.S.C. 703 et seq.), as amended.

Date: February 21, 1989.

**Frank Dunkle,**

*Director.*

[FR Doc. 89–4447 Filed 2–24–89; 8:45 am]

BILLING CODE 4310–55–M

# Notices

Federal Register
Vol. 54, No. 37
Monday, February 27, 1989

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF AGRICULTURE

### Federal Grain Inspection Service

### Meeting on Rice Inspection Services Within Missouri

Notice is hereby given of a public meeting to discuss expanding the responsibilities of the Missouri Department of Agriculture, Division of Grain Inspection and Warehousing, Grain Inspection Service Program, with respect to official rice inspection activities performed under the Agricultural Marketing Act of 1946. Currently, official rice inspection activities are performed within the State by either: (1) State employees who obtain samples and submit them to the Federal Grain Inspection Service (FGIS) field office in Jonesboro, Arkansas, for inspection and grading; or (2) FGIS employees who travel from the Jonesboro field office to the sampling sites, obtain the samples, and take them back to the field office for inspection and grading. The State of Missouri has expressed interest in expanding the services that the State provides to include the official inspection and grading of rice samples.

*Name:* Federal Grain Inspection Service Meeting on Rice Inspection Services within the State Boundaries of Missouri.

*Date:* March 16, 1989.

*Place:* Ramada Inn, Interstate 55 and U.S. Highway 62, Sikeston, Missouri 63801.

*Time:* 1:00 p.m.

*Purpose:* To solicit pertinent information and comments on the request by the Missouri Department of Agriculture to provide additional rice inspection services within the State boundaries.

Persons who wish to present comments during the meeting are requested to inform Lewis Lebakken, Jr., FGIS, USDA, Room 0628–S, P.O. Box 96454, Washington, DC 20090–6454, telephone (202) 475–3428 by March 10, 1989.

(Sections 202–208, 60 Stat. 1087, as amended; 7 U.S.C. 1621 *et seq.*)

Date: February 22, 1989.

**W. Kirk Miller,**

*Administrator.*

[FR Doc. 89–4472 Filed 2–24–89; 8:45 am]

BILLING CODE 3410-EN-M

### Soil Conservation Service

### Upper Stony Creek Watershed, California

**AGENCY:** Soil Conservation Service, USDA.

**ACTION:** Notice of a finding of no significant impact.

**SUMMARY:** Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for Upper Stony Creek Watershed, Colusa, Glenn, and Lake Counties, California.

**FOR FURTHER INFORMATION CONTACT:** Eugene E. Andreuccetti, State Conservationist, Soil Conservation Service, 2121–C Second Street, Davis, California, 95616, telephone (916) 449–2848.

**SUPPLEMENTARY INFORMATION:** The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional or national impacts on the environment. As a result of these findings, Eugene E. Andreuccetti, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project concerns a plan to reduce soil erosion and sustain agricultural production. The planned works of improvement include stockwater development, fencing, gully stabilization, channel revegetation, range seeding and fertilization, grazing land mechanical treatment, and prescribed burning to reduce catastrophic wildfire hazards. The plan also includes accelerated technical assistance and training for land treatment.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, state, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Eugene E. Andreuccetti.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the Federal Register.

This activity is listed in the Catalog of Federal Domestic Assistance under no. 10.904—Watershed Protection and Flood Prevention—and is subject to the provisions of executive Order 12372 which requires intergovernmental consultation with State and local officials.

**Eugene E. Andreuccetti,**

*State Conservationist.*

[FR Doc. 89–4461 Filed 2–24–89; 8:45 am]

BILLING CODE 3410-16-M

## BLACKSTONE RIVER VALLEY NATIONAL HERITAGE CORRIDOR COMMISSION

### Meeting

Notice is hereby given in accordance with section 552b of Title 5, United States Code, that a meeting of the Blackstone River Valley National Heritage Corridor Commission will be held on Thursday, March 2, 1989.

The Commission was established pursuant to Pub. L. 99–647. The purpose of the Commission is to assist federal, state and local authorities in the development and implementation of an integrated resource management plan for those lands and waters within the Corridor.

The meeting will convene at 7:00 p.m. at the Blackstone Municipal Building, St. Paul Street, Blackstone, Massachusetts, for the following reasons:

1. Report of the Chairman.
2. Report of the Interim Executive Director.
3. Report of the Treasurer.
4. Discussion of the 1989 recreational and interpretive programs.

5. Report of the Public Information and Education Subcommittee and a logo presentation.

6. Report of the Planning Subcommittee.

It is anticipated that about twenty people will be able to attend the session in addition to the Commission members.

Interested persons may make oral or written presentations to the Commission or file written statements. Such requests should be made prior to the meeting to: Lawrence D. Gall, Interim Executive Director, Blackstone River Valley National Heritage Corridor Commission, P.O. Box 34, Uxbridge, MA 01569, Telephone (508) 278-9400.

Further information concerning this meeting may be obtained from Lawrence Gall, Interim Executive Director of the Commission at the address above.

**Lawrence D. Gall,**

*Interim Executive Director, Blackstone River Valley National Heritage Corridor Commission.*

[FR Doc. 89-4457 Filed 2-24-89; 8:45 am]

BILLING CODE 4310-70-M

## DEPARTMENT OF COMMERCE

### Bureau of Export Administration

### Initiation of National Security Investigation of Imports of Uranium

**AGENCY:** Bureau of Export Administration, Commerce.

**ACTION:** Notice of an investigation under section 232 of the Trade Expansion Act of 1962, as amended (19 U.S.C. 1862), and request for comments.

**SUMMARY:** This notice is to advise the public that an investigation is being initiated under section 232 of the Trade Expansion Act of 1962, as amended (19 U.S.C. 1862) to determine the effects on the national security of imports of uranium. Interested parties are invited to submit written comments, opinions, data, information or advice relative to the investigation to the Strategic Analysis Division, Office of Industrial Resource Administration, Department of Commerce.

**DATE:** Comments must be received not later than March 29, 1989. Written comments should be addressed to: Brad I. Botwin, Director, Strategic Analysis Division, Office of Industrial Resource Administration, Bureau of Export Administration, U.S. Department of Commerce, Room H3878, Washington, DC 20230.

**FOR FURTHER INFORMATION CONTACT:** Brad I. Botwin, Director, Strategic Analysis Division (202) 377-4060, or Edward Levy, Section 232 Program Manager (202) 377-3795; Office of Industrial Resource Administration, Bureau of Export Administration, U.S. Department of Commerce, Room H3878, Washington, DC 20230.

**SUPPLEMENTARY INFORMATION:** On December 30, 1988, former Secretary of Energy John Herrington wrote to the Secretary of Commerce to request that he initiate an investigation under section 232 of the Trade Expansion Act of 1962, as amended (19 U.S.C. 1862), to determine the effects on the national security of imports of uranium. The findings and recommendations of the investigation will be reported by the Secretary of Commerce to the President no later than September 26, 1989.

The articles to be investigated include: uranium ores and concentrates, metals, oxides, hexafluorides, and other uranium materials. These items are currently described by Standard Industrial Classification Code 355935. They are currently classifiable in the Harmonized Tariff Schedule at items: 2612.10.00.00 for uranium ores and concentrates; 2844.10.10.00 for uranium metals; 2844.10.20.10 for uranium oxides; 2844.10.20.20 for uranium florides; and 2844.10.50.00 for other uranium materials.

This investigation is being undertaken in accordance with Part 705 of Title 15 of the Code of Federal Regulations (15 CFR Part 705) ("regulations"). Interested parties are invited to submit written comments, opinions, data, information or advice relevant to this investigation to the Office of Industrial Resource Administration, U.S. Department of Commerce, no later than March 29, 1989.

The Department is particularly interested in comments and information directed to the criteria listed in § 705.4 of the regulations (15 CFR 705.4) as they affect national security, including the following:

(a) Quantity of and circumstances related to the importation of the articles subject to the investigation;

(b) Domestic production and productive capacity needed for these articles to meet anticipated national security requirements;

(c) Existing and potential availability of skilled labor, raw materials, production equipment, and facilities to produce these items;

(d) Growth requirements of domestic industries to meet national security requirements and/or requirements to assure such growth;

The impact of foreign competition on the economic welfare and on the capacity of the domestic industry to meet national security needs; and

(f) The impact of imports on domestic competition, productivity, and the strength of the domestic industry to meet national security requirements.

All materials should be submitted with 10 copies. Public information will be made available at the Department of Commerce for public inspection and copying. Material that is national security classified information or business confidential information is subject to the provisions of § 705.6 of the regulations (15 CFR 705.6). Anyone submitting business confidential information should clearly identify the business confidential portion of the submission and also provide a non-confidential submission which can be placed in the public file.

The public record concerning this investigation will be maintained in the Freedom of Information Inspection Facility, Bureau of Export Administration, Room H4886, U.S. Department of Commerce, 14th and Pennsylvania Avenue, NW., Washington DC, 20230. The records in this facility may be inspected and, for a fee, copied in accordance with regulations published in Part 4 of Title 15 of the Code of Federal Regulations.

Information about the inspection and copying of records at the facility may be obtained from the Freedom of Information Inspection Facility, Bureau of Export Administration, at (202) 377-2593.

If deemed appropriate by the Department, public hearings may be held to elicit further information as provided in § 705.8 (15 CFR 705.8) of the Regulations. Notice will be published in the **Federal Register**, giving the time, place, and matters to be considered at such hearing(s) so that interested parties will have an opportunity to participate.

**Michael E. Zacharia,**

*Assistant Secretary for Export Administration.*

[FR Doc. 89-4445 Filed 2-24-89; 8:45 am]

BILLING CODE 3510-DT-M

## National Institute of Standards and Technology

**[Docket No. 90104-9004]**

### Proposed Revision of Federal Information Processing Standard (FIPS PUB) 127, Database Language SQL

**AGENCY:** National Institute of Standards and Technology (NIST), Commerce.

**ACTION:** The purpose of this notice is to announce the proposed revision of Federal Information Processing

Standard (FIPS PUB) 127, Database Language SQL.

**SUMMARY:** This proposed revision to FIPS 127, Database Language SQL, incorporates two draft proposed American National Standards: SQL/Addendum–1 (dpANS X3.135–1–198X) and Embedded SQL (dpANS X3.168–198X). The American National Standards Institute is expected to approve these standards as American National Standards.

This proposed revision offers new conformance alternatives, new programming language interfaces, a new integrity enhancement option, clarification and correction of existing specifications, and additional considerations for use in procurements. It does not contain any new requirements that would make an existing conforming implementation nonconforming.

Prior to the submission of this proposed revision to FIPS PUB 127 to the Secretary of Commerce for review and approval, it is essential to assure that consideration is given to the needs and views of manufacturers, the public, and State and local governments. The purpose of this notice is to solicit such views.

This proposed revision contains two sections: (1) An announcement section, which provides information concerning the applicability, implementation, and maintenance of the standard; and (2) a specifications section which deals with the technical requirements of the standard. Only the announcement section of the standard is provided in this notice. Interested parties may obtain copies of the two draft proposed American National Standards (dpANS X3.135–1–198X and dpANS X3.168–198X) from the Global Engineering Documents, Inc. (1–800–854–7179).

**DATE:** Comments on this proposed revision must be received on or before May 30, 1989.

**ADDRESS:** Written comments concerning the adoption of this proposed revision should be sent to: National Institute of Standards and Technology, ATTN: Proposed Revision of FIPS 127, Technology Building, Room B–154, Gaithersburg, MD 20899.

Written comments received in response to this notice will be made part of the public record and will be made available for inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, Herbert C. Hoover Building, 14th Street between Pennsylvania and Constitution Avenues, NW., Washington. DC 20230.

**FOR FURTHER INFORMATION CONTACT:** Dr. Leonard Gallagher, National Institute of Standards and Technology, Gaithersburg, MD 20899, telephone (301) 975–3251.

Date: February 21, 1989.

**Raymond G. Kramer,**

*Acting Director.*

**Federal Information Processing Standards Publication 127–1**

*(Date)*

*Announcing the Standard for Database Language SQL*

Federal Information Processing Standards Publications (FIPS PUBS) are issued by the National Institute of Standards and Technology after approval by the Secretary of Commerce pursuant to section 111(d) of the Federal Property and Administrative Services Act of 1949 as amended by the Computer Security Act of 1987, Public Law 100–235.

*1. Name of Standard.* Database Language SQL (FIPS PUB 127–1).

*2. Category of Standard.* Software Standard, Database.

*3. Explanation.* This publication is a revision of FIPS PUB 127 that offers new conformance alternatives, new programming language interfaces, a new integrity enhancement option, clarification and correction of existing specifications, and additional considerations for use in procurements. This revision supersedes FIPS PUB 127. It does not contain any new requirements that would make an existing conforming implementation nonconforming.

This publication announces adoption of American National Standard Database Language SQL with Integrity Enhancement, ANSI X3.135.1–198x, and American National Standard Database Language Embedded SQL, ANSI X3.168–198x, as the Federal Information Processing Standard for Database Language SQL (FIPS SQL). The exact specification is in section 10 of this standard.

ANSI X3.135.1–198x is a revision of ANSI X3.135–1986 that specifies syntax and semantics of SQL language interfaces for defining and accessing SQL databases. These interfaces include:

—A schema definition langage, for declaring the structures and integrity constraints of a database.

—A module language, including SQL statements, for declaring the database procedures and executable statements of a specific database application. The module language specification includes language bindings for programming languages COBOL, FORTRAN, Pascal, or PL/I.

ANSI X3.135.1–198x includes an addendum to ANSI X3.135–1986 that specifies an optional "integrity enhancement" feature. This feature includes referential integrity constraints, check clauses, and default clauses.

ANSI X3.135.1–198x also includes various clarifications and correction of several errors known to exist in the ANSI X3.135–1986 specification.

ANSI X3.168.1–198x specifies embedded syntax for inserting SQL statements into application programs. It includes module language bindings for programming languages Ada or C, and specifies embedded syntax for inserting SQL statements into programming languages Ada, C, COBOL, FORTRAN, Pascal, or PL/I.

The purpose of FIPS SQL is to promote portability of database application programs and programmers among different installations. The standard is used by implementors as the reference authority in developing a FIPS conforming relational model database management system, with standard programming language interfaces to that database management system. The standard is used by application programmers to help write SQL conforming applications and by other computer professionals who need to know the precise syntactic and semantic rules of Database Language SQL.

*4. Approving Authority.* Secretary of Commerce.

*5. Maintenance Agency.* Department of Commerce, National Institute of Standards and Technology (National Computer Systems Laboratory).

*6. Cross Index.* a. American National Standard Database Language SQL with Integrity Enhancement, ANSI X3.135.1–198x (revision of ANSI X3.135–1986).

b. American National Standard Database Language Embedded SQL, ANSI X3.168–198x.

c. ISO 9075:1989, Database Language SQL with Integrity Enhancement (revision of ISO 9075:1987).

*7. Related Documents.* a. Federal Information Resource Management Regulation 201–8.1, Federal ADP and Telecommunication Standards.

b. Federal Information Processing Standards Publication 124, Guideline on Functional Specifications for Database Management Systems, September 1986.

c. Federal Information Processing Standards Publication 110, Guideline for Choosing a Data Management Approach, December 1984.

d. NBS Special Publication 500–108, Guide on Data Models in the Selection

and use of Database Management Systems, January 1984.

*8. Objectives.* Federal standards for database management systems permit Federal departments and agencies to exercise more effective control over the production, management, and use of the Government's information resources. The primary objectives of Federal database management system standards are:

—to encourage more effective utilization and management of database application programmers by ensuring that skills acquired on one job are transportable to other jobs, thereby reducing the cost of database programmer retraining.

—to reduce overall software costs by making it easier and less expensive to maintain database definitions and database application programs and to transfer these definitions and programs among different computers and database management systems, including replacement database management systems.

—to reduce the cost of software development by achieving increased database application programmer productivity through the understanding and use of database methods employing standard structures and operations, standard data types, standard constraints, and standard interfaces to programming languages.

—to protect the software assets of the Federal government by ensuring to the maximal feasible extent that Federal database management system standards are technically sound and that subsequent revisions are compatible with the installed base.

Government-wide attainment of the above objectives depends upon the widespread availability and use of comprehensive and precise standard database management system specifications.

*9. Applicability.* a. Federal standards for database management systems should be used for computer database applications and programs that are either developed or acquired for government use. The Database Language SQL is one of the database management system standards provided for use by all Federal departments and agencies. The Database Language SQL is suited for use in database applications that employ the relational data model. The relational data model is appropriate for applications requiring flexibility in the data structures and access paths of the database. The relational data model is desirable where there is a substantial need for ad hoc data manipulation by end users who are not computer professionals, in addition to the need for access by applications under production control.

Although this standard does not specifically address interactive database access through fourth generation languages, the SQL statements specified by this standard are appropriate for such use. This standard may be used to define the syntax and semantics of database access from such fourth generation languages.

Although this standard does not specifically address distributed database applications, it may be used, along with facilities for remote database access and/or distributed transaction processing, to access relational structured data at remote nodes in a distributed system.

b. The use of FIPS database languages is strongly recommended for database applications when one or more of the following situations exist:

—It is anticipated that the life of the database application will be longer than the life of the presently utilized equipment or database management system, if any.

—The database application is under constant review for updating of the specifications, and changes may result frequently.

—The database application is being designed and developed centrally for a decentralized system that employs computers of different makes and models or database software acquired from a different vendor.

—The database application will or might be run under a database management system other than that for which the database application is initially written.

—The database application is to be understood and maintained by programmers other than the original ones.

—The database application is or is likely to be used by organizations outside the Federal government (i.e., State and local governments, and others).

c. Nonstandard language features should be used only when the needed operation or function cannot reasonably be implemented with the standard features alone. A needed language feature not provided by the FIPS database languages should, to the extent possible, be acquired as part of an otherwise FIPS conforming database management system. Although nonstandard language features can be very useful, it should be recognized that their use may make the interchange of programs and future conversion to a revised standard or replacement database management system more difficult and costly.

d. It is recognized that programmatic requirements may be more economically and efficiently satisfied through the use of a database management system employing a different data model than those provided by the FIPS database languages or the use of a database management system that functionally conforms to a FIPS database language but does not conform to all other aspects of the FIPS. The use of any facility should be considered in the context of system life, system cost, data integrity, and the potential for data sharing.

e. Programmatic requirements may be more economically and efficiently satisfied by the use of automatic program generators or by database access through other high-level language information processing systems. However, if the final output of a program generator or high-level language system is language that accesses a relational database, then that language should conform to the conditions and specifications of SQL.

*10. Specifications—10.1 Adoption of ANSI SQL specifications.* FIPS SQL includes all provisions from ANSI X3.135.1–198x, Database Language SQL with Integrity Enhancement, and ANSI X3.168–198x, Database Language Embedded SQL, with the following exceptions:

a. FIPS SQL does not recognize Level 1 on ANSI SQL or partial conformance to just DDL or DML. Instead, the FIPS SQL specification is for "Full SQL conformance to level 2" as specified in section 3.4 of X3.135.1–198x.

b. FIPS SQL does not include PL/I language bindings, since PL/I is not a FIPS programming language.

c. FIPS SQL does not recognize conformance solely by "direct invocation of SQL data manipulation language statements" as specified in section 3.4 of X3.135.1–198x, because that concept is not adequately specified in ANSI SQL and implementations cannot be tested for conformance. Conformance to FIPS SQL requires a Module Lanaguage or Embedded SQL interface to one or more FIPS programming languages.

d. FIPS SQL includes a "FIPS Flagger" requirement as specified below.

*10.2 FIPS Flagger.* An implementation that provides additional facilities not specified by this standard shall also provide an option to flag nonconforming SQL language or conforming SQL language that may be processed in a nonconforming manner.

a. ANSI SQL allows a conforming implementation to provide facilities

beyond those specified in the standard. The following paragraph appears in section 3.4 of ANSI X3.135.1–198x:

A conforming implementation may provide additional facilities not specified by this standard. An implementation remains conforming even if it provides user options to process nonconforming SQL language or to process conforming SQL language in a nonconforming manner.

The FIPS Flagger is included in FIPS SQL in order to assist application programmers in developing portable application programs. It allows informed use of implementor extensions when they are appropriate (see paragraph 9c).

b. The FIPS Flagger is intended to effect a static check of SQL language. Normally this check is applied at syntax compilation time, but for interpreted SQL language it can be enforced when the SQL language is interpreted by the impelementation. There is no requirement to detect extensions that cannot be determined until execution time.

c. An implementation need only flag SQL language that is not otherwise in error as far as that implementation is concerned. An implementation may choose to check SQL language in two steps; first through its normal syntax analyzer and secondly through the flagger. The first step produces error messages for nonstandard SQL language that the implementation cannot process or recognize. The second step produces flagger messages for nonstandard SQL language that it could process. Any such two-step process should be transparent to the end user.

d. Any SQL language that violates Format or Syntax Rules, except privilege enforcement rules, is an extension and must be flagged.

e. The granularity of extension detection shall be no coarser than at the statement level. If a system is processing SQL language that contains errors, then it may be very difficult within a single statement to determine what is an error and what is an extension. However, if an implementation is processing SQL language that contains no errors as far as that implementation is concerned, then it should be able to detect and flag all extensions at the same time.

f. In order to provide upward compatibility to its own customer base, or to provide performance advantages under special circumstances, a conforming SQL implementation may provide user options to process conforming SQL language in a nonconforming manner. If this is the case, then it is required that the implementation also provide a flagger option to detect SQL conforming language that may be processed differently on that implementation. This flagger feature allows an application programmer to identify conforming SQL language that may perform differently if moved from a nonconforming to a conforming SQL processing environment.

g. In certain circumstances (see paragraph 9c) an application programmer may choose to use a nonstandard language extension provided by an implementation (e.g. a COMPLEX data type for FORTRAN applications). It is required that the flagger detect all direct occurrences of such extensions. In addition, it is desirable that the flagger or the implementation provide support (e.g. a cross-listing of variables and database identifiers) for detecting all secondary references to such extensions. Secondary references may include variables, parameters, views, or other database identifiers that do not themselves violate syntax rules, but refer to an object that is or contains an extension. This additional feature would allow an application programmer to identify all SQL language occurrences that may have to be modified if the application is to be moved from a nonconforming to a conforming SQL processing environment.

11. *Implementation.* Implementation of this standard involves three areas of consideration: acquisition of FIPS SQL implementations, interpretation of FIPS SQL, and validation of FIPS SQL implementations.

11.1 *Acquisition of SQL Implementations.*

a. This publication is effective immediately. It is a revision of an existing FIPS that offers new conformance alternatives, a new integrity option, clarification and correction of existing specifications, and additional considerations for use in procurements. It does not contain any new requirements that would make an existing conforming implementation nonconforming. No delayed effective date or transition period is necessary.

b. Relational model database management system acquired for Federal use should implement FIPS SQL. Conformance to FIPS SQL should be considered whether SQL implementations are developed internally, acquired as part of an ADP system procurement, acquired by separate procurement, used under an ADP leasing arrangement, or specified for use in contracts for programming services.

11.2 *Interpretation of FIPS SQL.* NIST provides for the resolution of questions regarding FIPS SQL specifications and requirements, and issues official interpretations as needed. All questions about the interpretation of FIPS SQL should be addressed to: Director, National Computer Systems Laboratory, ATTN: Database Language SQL Interpretation, National Institute of Standards and Technology, Gaithersburg, MD 20899, Telephone: (301) 975–2833.

11.3 *Validation of SQL Implementations.* A suite of automated validation tests for SQL implementations is currently available. It is planned that an enhancement of this test suite will be the basis of a future "certificate of validation" offered to implementations claiming conformance to this standard. For more information on SQL validation tests, or availability of certificates of validation, contact: Director, National Computer Systems Laboratory, ATTN: Software Standards Testing Program, National Institute of Standards and Technology, Gaithersburg, MD 20899, Telephone: (301) 975–3258.

12. *Waivers.* Under certain exceptional circumstances, the heads of Federal departments and agencies may approve waivers to Federal Information Processing Standards (FIPS). The head of such agency may redelegate such authority only to a senior official designated pursuant to section 3506(b) of Title 44, U.S. Code. Waivers shall be granted only when:

a. Compliance with a standard would adversely affect the accomplishment of the mission of an operator of a Federal computer system, or

b. Cause a major adverse financial impact on the operator which is not offset by Governmentwide savings.

Agency heads may act upon a written waiver request containing the information detailed above. Agency heads may also act without a written waiver request when they determine that conditions for meeting the standard cannot be met. Agency heads may approve waivers only by a written decision which explains the basis on which the agency head made the required finding(s). A copy of each such decision, with procurement sensitive or classified portions clearly identified, shall be sent to: National Institute of Standards and Technology; ATTN: FIPS Waiver Decisions, Technology Building, Room B–154; Gaithersburg, MD 20899.

In addition, notice of each waiver granted and each delegation of authority to approve waivers shall be sent promptly to the Committee on Government Operations of the House of Representatives and the Committee on Governmental Affairs of the Senate and

shall be published promptly in the **Federal Register.**

When the determination on a waiver applies to the procurement of equipment and/or services, a notice of the waiver determination must be published in the *Commerce Business Daily* as a part of the notice of solicitation for offers of an acquisition or, if the waiver determination is made after that notice is published, by amendment to such notice.

A copy of the waiver, any supporting documents, the document approving the waiver and any supporting and accompanying documents, with such deletions as the agency is authorized and decides to make under 5 U.S.C. Sec. 552(b), shall be part of the procurement documentation and retained by the agency.

13. *Special Procurement Considerations.* FIPS SQL includes various alternatives for interfacing to programming languages, specifies "integrity enhancement" as an optional component of the standard, and does not specify any minimum requirements for the size or number of occurrences of database constructs. Any invocation of this standard in a procurement should indicate the programming languages to which it interfaces, whether direct invocation of SQL statements is required, whether module language, embedded SQL, or both are required for each language, whether the optional integrity feature is to be included, and what the sizing and occurrence requirements are. Any use of this standard in a broader database management system (DBMS) procurement should be accompanied with functional requirements for other DBMS components and facilities.

13.1 *Integrity enhancement feature.* References to this standard in a procurement should indicate whether or not the "integrity enhancement" feature (an optional component of X3.135.1–198x) is required. Failure to make this indication means that the feature is not required.

13.2 *Programming language interfaces.* References to this standard in a procurement should indicate which programming languages (e.g. Ada, C, COBOL, FORTRAN, or Pascal) are to be supported for language interface. Failure to make this indication means that support for any one of these languages satisfies the FIPS SQL requirement.

13.3 *Style of language interface.* References to this standard in a procurement should indicate, for each programming language identified above, whether the language interface is to support Module Language, Embedded SQL, or both. Failure to make this indication means that support for any one interface style satisifies the FIPS SQL requirement.

13.4 *Interactive SQL.* References to this standard in a procurement should indicate whether or not "direct invocation of SQL statements" is required and, if required, which SQL statements are to be directly invocable. Failure to make this indication means that direct invocation of SQL statements is not required. A requirement for direct invocation of SQL statements that fails to identify which statements are invocable means that interactive availability of the following statements satisifies the requirement:

CREATE TABLE statement
CREATE VIEW statement
GRANT privilege statement
INSERT INTO statement
SELECT statement, with ORDER BY instead of INTO
UPDATE statement: searched
DELETE statement: searched
COMMIT WORK statement
ROLLBACK WORK statement

In Interactive SQL, if a statement causes an exception resulting in a non-zero SQLCODE, then the system shall display a message indicating that the statement failed and should give a textual description of the failure. Also, in Interactive SQL, an implementation shall provide some implementor specified symbol for representing null values.

13.5 *Sizing for database constructs.* References to this standard in a procurement should indicate minimum requirements for the precision, size, or number of occurrences of database constructs. Failure to make this indication means that the values detailed below are by default the minimum requirements.

| | |
|---|---|
| Length of an identifier | 18 |
| Length of Character type | 240 |
| Decimal precision of NUMERIC type | 15 |
| Decimal precision of DECIMAL type | 15 |
| Decimal precision of INTEGER type | 10 |
| Decimal precision of SMALLINT type | 5 |
| Binary precision of FLOAT type | 20 |
| Binary precision of REAL type | 20 |
| Binary precision of DOUBLE PRECISION type | 30 |
| Columns in a table | 100 |
| Values in an INSERT statement | 100 |
| Set clauses in an UPDATE statement | 20 |
| Length of a row (see Note 1) | 2000 |
| Column specifications in a UNIQUE constraint | 6 |
| Length of UNIQUE constraint (see Note 1) | 120 |
| Column specifications in a GROUP by clause | 6 |
| Sort specifications in an ORDER By clause | 6 |
| Table references in an SQL statement | 10 |
| Cursors simultaneously open | 10 |

Note 1.—The length of a collection of columns is defined to be the sum of: twice the number of columns, length of each character column, decimal precision plus 1 of each exact numeric column, binary precision divided by 4 plus 1 of each approximate numeric column.

13.6 *Character data values.* The set of character values for the character data type and the collating sequence of characters in SQL are both implementor-defined. References to this standard in a procurement should indicate any additional character data requirements. For example, applications running in a specific programming language environment may wish to specify that the SQL character values coincide with the character values and the collating sequence of that programming language. Failure to indicate specific character set requirements means that support for representation of the 95-character graphic subset of ASCII (FIPS PUB 1–2), in an implementor specified collating sequence, is by default the minimum requirement.

13.7 *DBMS procurement.* Database software is normally purchased as a complete package called a database management system (DBMS). A DBMS is an implementation of one or more data models (e.g. the network model or the relational model), together with other components, features, or data interfaces for efficient data administration. These additional facilities are not specified by this standard, so each procurement should itself specify the functional requirements of each additional feature desired.

Additional facilities most often contained in a DBMS package include: schema manipulation, dynamic SQL, system catalog tables, special data types (e.g. date, time), database import and export tools, data dictionary, data storage specification, natural language query, report writer, query by forms, menu driven data access, application development system, graphics display, or upload and download between mainframes and workstations. Emerging specifications for an expanded SQL database language in ANSI and ISO standardization bodies may result in future standardization for some of these facilities; others may always remain implementation specific.

A DBMS may also provide additional data structures, such as indices, or software, such as query optimizers, to enhance performance. User requirements for monitoring database activity or tools for tuning database

performance should be specified explicitly.

Some database management systems must operate in a highly secure environment that requires "trustworthy" database access control beyond the GRANT privilege facility and the VIEW definition capability specified in this standard. Procurements for systems that operate in these environments should include explicit additional requirements that must be supported.

13.8 *Integration.* In many cases a database or a database management system must be integrated with other information processing systems operating in the same environment. Examples of other sytems might include: the operating system, document processing systems, engineering CAD/CAM systems, graphics systems, an information resource dictionary system, statistical analysis systems, a transaction processing system, or an artificial intelligence system. In addition, distributed data under the control of different vendor's database management systems may require integration into a coordinated global view through remote database access or open distributed processing. All such integration is beyond the scope of this standard and, if desired, must be specified explicitly as part of procurement requirements.

14. *Where to Obtain Copies.* Copies of this publication are for sale by the National Technical Information Service, U.S. Department of Commerce, Springfield, VA 22161. (Sale of the included specification documents, ANSI X3.135.1-198x and ANSI X3.168-198x, is by arrangement with the American National Standards Institute.) When ordering, refer to Federal Information Processing Standards Publication 127-1 (FIPS PUB 127-1), and title. Payment may be made by check, money order, or deposit account.

[FR Doc. 89-4439 Filed 2-24-89; 8:45 am]

BILLING CODE 3510-CN-M

## National Oceanic and Atmospheric Administration

## North Pacific Fishery Management Council; Public Scoping Sessions

**AGENCY:** National Marine Fisheries Service (NMFS), NOAA, Commerce.

**ACTION:** Notice of public scoping sessions and request for comments.

**SUMMARY:** The North Pacific Fishery Management Council (Council) has initiated a comprehensive examination of long-term management alternatives for sablefish, other groundfish, halibut, and crab fisheries off Alaska. In connection with this examination, a series of public scoping sessions will be held to gather public input on the actions, alternatives, and impacts that will need to be considered during the decision-making process. In addition to the scoping sessions, the Council will take public comments during its April 11-14, 1989, meeting at the Sheraton Hotel in Anchorage, Alaska.

**DATES:** See **"SUPPLEMENTARY INFORMATION"** for dates, time, and locations of the scoping sessions.

**FOR FURTHER INFORMATION CONTACT:** Dick Tremaine, North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510, 907-271-2809.

**SUPPLEMENTARY INFORMATION:** The dates, time, and locations of the public scoping sessions are scheduled as follows:

February 28, 1989, 9:00 a.m.-noon.
NMFS Montlake Auditorium, 2725 Montlake Boulevard East, Seattle, Washington.

March 11, 1989, 4:30-6:30 p.m.
Senior Center, Dillingham, Alaska.

March 17, 1989, 9:00 a.m.-noon.
Senior Citizens Center, Kodiak, Alaska.

March 22, 1989, 1:00-4:30 p.m.
Centennial Building, Sitka, Alaska.

April 6, 1989, time TBA.
Western Alaska Fisheries Development Conference, Bethel, Alaska.

Dated: February 22, 1989.

**Richard H. Schaefer,**

*Director of Office Fisheries Conservation and Management, National Marine Fisheries Service.*

[FR Doc. 89-4475 Filed 2-24-89; 8:45 am]

BILLING CODE 3510-22-M

## Marine Mammals; Application for Modification; Dr. Thomas Albert (P282B)

Notice is hereby given that Dr. Thomas F. Albert, Senior Scientist, North Slope Borough, Department of Wildlife Management, P.O. Box 69, Barrow, Alaska 99723 requested a modification of Permit No. 519 issued on August 23, 1985 (50 FR 35286), under the authority of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216), the Endangered Species Act of 1973 (16 U.S.C. 1531-1544), and the regulations governing endangered fish and wildlife permits (50 CFR Parts 217-222).

Permit No. 519 issued to Dr. Albert in 1985 authorized the collection of specimen materials, over a 3-year period, from animals already dead as a result of either subsistence hunting by Alaska Eskimos or by virtue of being beached/stranded. The following number of specimen collections were authorized: 60 Bowhead whale (*Balaena mysticetus*); 15 gray whale (*Eschrichtius robustus*); 30 beluga whale (*Delphinapterus leucas*); 30 bearded seal (*Erignathus barbatus*); and 100 ringed seal (*Phoca hispida*). The request to extend the duration of the Permit No. 519 was granted January 11, 1989, to allow continued and uninterrupted research on the authorized animals.

Because of the increasing ability to gain access to subsistence harvested animals, and the continuing and expanding morphological, microbiological, and pollution related studies, the Permit Holder has requested an increase in the number of specimens collected from each animal to: 175 Bowhead whale (*Balaena mysticetus*); 25 gray whale (*Eschrichtius robustus*); 480 beluga whale (*Delphinapterus leucas*); 50 bearded seal (*Erignathus barbatus*); and 50 ringed seal (*Phoca hispida*).

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this modification request should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, Silver Spring, Maryland 20910, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries. All statements and opinions contained in this modification request are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above modification request are available for review by interested persons in the following offices:

Office of Protected Resources, National Marine Fisheries Service, 1335 East West Hwy., Room 7324, Silver Spring, Maryland 20910; and Director, Alaska Region, National Marine

Fisheries Service, 709 West 9th Street, Federal Bldg., Juneau, Alaska 99802.

Dated February 21, 1989.

**Nancy Foster,**

*Director, Office of Protected Resources and Habitat Programs.*

[FR Doc. 89-4487 Filed 2-24-89; 8:45 am]

BILLING CODE 3510-22-M

## Marine Mammals; Issuance of Permit: Dr. Bernd Wursig and Mr. Salvadore Cerchio (P36B)

On November 14, 1988 notice was published in the **Federal Register** (53 FR 45800) that an application had been filed by Dr. Bernd Wursig and Mr. Salvadore Cerchio, Moss Landing Marine Laboratories, Moss Landing, California 95039, for a permit to take by harassment humpback whales (*Megaptera novaeangliae*) for the purposes of scientific research.

Notice is hereby given that on February 21, 989, as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407) and the Endangered Species Act of 1973, the National Marine Fisheries Service issued a Permit for the above taking, subject to certain conditions set forth therein.

Issuance of this Permit, as required by the Endangered Species Act of 1973, is based on the finding that such Permit: (1) Was applied for in good faith; (2) will not operate to the disadvantage of the endangered species which is the subject of the Permit; and (3) will be consistent with the purposes and policies set forth in section 2 of the Act. This Permit was also issued in accordance with and is subject to Parts 220-222 of Title 50 CFR, the National Marine Fisheries Service regulations governing endangered species permits.

The Permit is available for review in the following offices:

Office of Protected Resources, National Marine Fisheries Service, 1335 East West Hwy., Silver Spring, Maryland 20910; and Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731.

Date: February 21, 1989.

**Nancy Foster,**

*Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service.*

[FR Doc. 89-4488 Filed 2-24-89; 8:45 am]

BILLING CODE 3510-22-M

## National Technical Information Service

### Intent To Grant Exclusive Patent License to Akzo Chemical Inc.

The National Technical Information Service (NTIS), U.S. Department of Commmerce, intends to grant to Akzo Chemicals Inc., having a place of business in Chicago, IL, an exclusive license in the United States and certain foreign countries to practice the invention embodied in U.S. Patent 3,969,549 (Patent Application Serial Number 5-536,125) "Method of Deacidifying Paper." The patent rights in this invention have been assigned to the United States of America, as represented by the Secretary of Commerce.

The intended exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The intended license may be granted unless, within sixty days from the date of this published notice, NTIS receives written evidence and argument which establishes that the grant of the intended license would not serve the public interest.

Inquiries, comments, and other materials relating to the proposed license must be submitted to Charles A. Bevelacqua, Director Office of Federal Patent Licensing, NTIS, Box 1423, Springfield, VA 22151.

A copy of the instant patent may be purchased from the Commissioner of Patents, U.S. Patent & Trademark Office, Washington, DC 20231.

**Douglas J. Campion,**

*Associate Director, Office of Federal Patent Licensing, National Technical Information Service, Department of Commerce.*

[FR Doc. 89-4392 Filed 2-24-89; 8:45 am]

BILLING CODE 3510-04-M

### Intent To Grant Exclusive Patent License to Monterey Mushrooms, Inc.

The National Technical Information Service (NTIS), U.S. Department of Commerce, intends to grant to Monterey Mushrooms, Inc., having a place of business in Santa Cruz, California, an exclusive license in the United States to practice the invention embodied in U.S. Patent Application S.N. 7-123,451, "Process for Preserving Raw Fruits and Vegetables Using Ascorbic Acid Esters and Compositions Thereof". The patent rights in this invention have been assigned to the United States of America, as represented by the Secretary of Commerce.

The intended exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The intended license may be granted unless, within sixty days from the date of this published Notice, NTIS receives written evidence and argument which establishes that the grant of the intended license would not serve the public interest.

Inquiries, comments, and other materials relating to the proposed license must be submitted to Douglas J. Campion, Associate Director, Office of Federal Patent Licensing, NTIS, Box 1423, Springfield, VA 22151.

A copy of the instant patent application may be purchased from the NTIS Sales Desk by telephoning 703-487-4650 or by writing to NTIS, 5285 Port Royal Road, Springfield, VA 22161.

**Douglas J. Campion,**

*Associate Director, Office of Federal Patent Licensing, National Technical Information Service, U.S. Department of Commerce.*

[FR Doc. 89-4391 Filed 2-24-89; 8:45 am]

BILLING CODE 3510-04-M

## National Telecommunications and Information Administration

### Federal Advisory Committee Act; Frequency Management Advisory Council; Open Meeting

**AGENCY:** National Telecommunications and Information Administration, Commerce.

**ACTION:** Notice of open meeting.

**SUMMARY:** In accordance with the provisions of the Federal Advisory Committee Act, 5 U.S.C. App. 2, notice is hereby given that the Frequency Management Advisory Council (FMAC) will meet from 9:30 a.m. to 4:30 p.m. on March 17, 1989, in Room 1605 at the United States Department of Commerce, 14th Street and Pennsylvania Avenue, NW., Washington, DC (Public entrance to the building is on 14th Street between Pennsylvania Avenue and Constitution Avenue.)

The Council was established on July 19, 1965. The objective of the Council is to advise the Secretary of Commerce on radio frequency spectrum allocation matters and means by which the effectiveness of Federal Government frequency management may be enhanced. The Council consists of 15 members whose knowledge of telecommunications is balanced in the functional areas of manufacturing, analysis and planning, operations, research, academia and international negotiations.

The principal agenda items for the meeting will be:

(1) Policy Implications for Spectrum Use in the 1990's.

(2) Radio Frequency Radiation Exposure Issues.

(3) Spectrum Use Measure (SUM) Data Base—Mobile Systems.

(4) Trunked Land Mobile Pilot Radio Program.

(5) Spectrum Conservation Techniques.

(6) Major Studies at NTIA.

The meeting will be open to public observations. A period will be set aside for oral comments or questions by the public which do not exceed 10 minutes each per member of the public. More extensive questions or comments should be submitted in writing before March 10, 1989. Other public statements regarding Council affairs may be submitted at any time before or after the meeting. Approximately 20 seats will be available for the public on a first-come, first-served basis.

Copies of the minutes will be available on request 30 days after the meeting.

**FOR FURTHER INFORMATION CONTACT:** Inquiries may be addressed to the Executive Secretary, FMAC, Mr. Michael W. Allen, National Telecommunications and Information Administration, Room 4099, U.S. Department of Commerce, 14th Street and Pennsylvania Avenue, NW., Washington, DC 20230, telephone 202–377–1850.

Dated: February 22, 1989.

**Michael W. Allen,**

*Executive Secretary, FMAC, National Telecommunications and Information Administration.*

[FR Doc. 89–4419 Filed 2–24–89; 8:45 am]

BILLING CODE 3510-60-M

## DEPARTMENT OF DEFENSE

### Department of the Air Force

### USAF Scientific Advisory Board Meeting

February 21, 1989.

The USAF Scientific Advisory Board AD Hoc Committee on Conventional Munitions will meet on 14–16 March, 1989 at the Pentagon, Washington, DC.

The purpose of this meeting is to gather information on requirements and technological advances in conventional munitions. This meeting will involve discussions of classified defense matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (202) 697–4648.

**Patsy J. Conner,**

*Air Force Federal Register Liaison Officer.*

[FR Doc. 89–4416 Filed 2–24–89; 8:45 am]

BILLING CODE 3910-01-M

### Department of the Army

### Command and General Staff College Advisory Committee Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463) announcement is made of the following committee meeting:

*Name:* Command and General Staff College (CGSC) Advisory Committee.

*Date:* 1–3 March 1989.

*Place:* Room 113, Bell Hall, Ft. Leav. KS 66027–6900.

*Time:* 2000–2200, 1 March 1989; 0900–1630, 2 March 1989; 0900–1400, 3 March 1989.

*Proposed Agenda:*

2000–2200, 1 March: Review of CGSC educational program.

0900–1630, 2 March: Continuation of review.

0900–1000, 3 March: Continuation of review.

1000–1130, 3 March: Executive session.

1300–1430, 3 March: Report to Commandant.

The purpose of the meeting is for the Advisory Committee to examine the entire range of college operations and, where appropriate, to provide advice and recommendations to the College Commandant and Faculty.

The meeting will be open to the public to the extent that space limitations of the meeting location permit. Becaue of these limitations, interested parties are requested to reserve space by contacting the Committee's Executive Secretary.

**Philip J. Brookes,**

*Executive Secretary, CGSC Advisory Committee, Bell Hall, Ft. Leavenworth, KS, Phone: 913–684–2741.*

[FR Doc. 89–4411 Filed 2–24–89; 8:45 am]

BILLING CODE 3710-08-M

### Army Science Board; Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

*Name of the Committee:* Army Science Board (ASB).

*Dates of Meeting:* March 14–15, 1989.

*Time:* 0830–1700 hours each day.

*Place:* Adelphi, Maryland.

*Agenda:* The 1989 Army Science Board Summer Study on International Cooperation and Data Exchange to Enhance the Army's Technology Base will hold its second meeting at the U.S. Army's Laboratory Command. The purpose of this meeting is to gather additional data on current international efforts with a special emphasis on the European countries. This meeting will be open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695–3039/7046.

**Sally A. Warner,**

*Administrative Officer, Army Science Board.*

[FR Doc. 89–4491 Filed 2–24–89; 8:45 am]

BILLING CODE 3710-08-M

### Department of the Navy

### Intention To Prepare an Environmental Impact Statement for Modification of Submarine Facilities at the Naval Complex, Charleston, SC

Pursuant to section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969 and the Council on Environmental Quality regulations (40 CFR Parts 1500–1508), the Department of the Navy announces its intent to prepare an Environmental Impact Statement (EIS) for modification of submarine facilities at the Charleston, South Carolina naval complex.

The EIS will address the proposed replacement of two homported submarine squadrons at Naval Station Charleston with two squadrons of advanced submarines. The advanced submarines are physically larger, have a deeper draft, and have different personnel requirements. Environmental impacts of the proposed acton may result from the construction and/or modification of berthing, maintenance, and other waterfront and inland support facilities; channel and berthing area dredging; dredged material disposal; and changes in personnel support requirements.

Five alternatives are currently identified for evaluation in the EIS:

1. No action alternative (no change in current operations or facilities).

2. Construction of new pier and waterfront facilities at Naval Weapons Station Charleston, South Carolina.

3. Construction of new pier and waterfront facilities at Naval Station Charleston, South Carolina.

4. Modernization of existing pier and waterfront facilities at Naval Station Charleston, South Carolina.

5. A combination of modernization of existing facilities at Naval Station Charleston and construction of new facilities at Naval Station Charleston or construction of new facilities at Naval Weapons Station Charleston.

An unaffiliated consulting firm has been retained to prepare the Draft and Final Environmental Impact Statement. Publication of the DEIS for agency and public review is planned for the first quarter of 1990.

The Navy will initiate a scoping process of the purpose of determining the scope of issues to be addressed and for identifying the significant issues related to this action. Southern Division, Naval Facilities Engineering Command will hold a public scoping meeting on March 14, 1989, beginning at 7:00 pm, in the Council Chambers, 1st Floor, North Charleston City Hall, 4900 LaCross Road, North Charleston, South Carolina. This meeting will be advertised in the North Charleston/Charleston, South Carolina area newspapers. A formal presentation will precede request for public comment. Navy representatives will be available at this meeting to receive comments from the public regarding issues of concern to the public. It is important that federal, state, and local agencies, and interested individuals take this opportunity to identify environmental concerns that should be addressed during the preparation of the EIS. In the interest of available time, each speaker will be asked to limit their oral comments to 5 minutes.

Agencies and the public are also invited and encouraged to provide written comment in addition to, or in lieu of, oral comments at the public meetings. To be most helpful, scoping comments should clearly describe specific issues or topics which the commentor believes the EIS should address. Written statements and or questions regarding the scoping process should be mailed no later than April 23, 1989 to the address at the end of this notice.

If further information or assistance is required in connection with this Notice of Intent, please contact Mr. Laurens Pitts, Southern Division, Naval Facilities Engineering Command, 2155 Eagle Drive, P.O. Box 10068, Charleston, South Carolina 29411-0068, telephone number (803) 743-0893.

Date: February 22, 1989.

**Sandra M. Kay,**

*Department of the Navy, Alternate Federal Register Liaison Officer.*

[FR Doc. 89-4468 Filed 2-24-89; 8:45 am]

BILLING CODE 3810-AE-M

## DEPARTMENT OF EDUCATION

## AGENCY FOR INTERNATIONAL DEVELOPMENT

## DEPARTMENT OF JUSTICE

### Agreement Delegating Certain Civil Rights Compliance Responsibilities for Educational Institutions

#### A. Purpose

Section 1-207 of Executive Order 12250 authorizes the Attorney General to initiate cooperative programs among Federal agencies responsible for enforcing Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, as amended, and section 504 of the Rehabilitation Act of 1973, as amended, and similar provisions of Federal law prohibiting discrimination on the basis of race, color, national origin, sex, handicap, or religion in programs or activities receiving Federal financial assistance.

This agreement will promote consistent and coordinated enforcement of covered nondiscrimination provisions as required in the Coordination of Enforcement of Non-discrimination in Federally Assisted Programs (28 CFR 42.401-42.415), increase the efficiency of compliance activity, and reduce burdens on recipients, beneficiaries, and Federal agencies by consolidating compliance responsibilities, by eliminating duplication in civil rights reviews and data requirements, and by promoting consistent application of enforcement standards.

#### B. Delegation

By this agreement the Agency for International Development designates the Department of Education as the agency responsible for specific civil rights compliance duties, as enumerated below, with respect to educational institutions. Responsibility for the following covered nondiscrimination provisions are delegated:

1. Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d to 2000d-4);

2. Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794).

This agreement specifies the duties to be performed by each agency. It does not alter the requirements of the joint Department of Justice/Equal Employment Opportunity Commission regulation concerning procedures for handling complaints of employment discrimination filed against recipients of Federal financial assistance. 28 CFR 42.601-42.613, 29 CFR 1691.1-1697.13, 48 FR 3570 (January 25, 1983). Complaints covered by that regulation filed with a delegating agency against a recipient of Federal financial assistance solely alleging employment discrimination against an individual are to be referred directly to the EEOC by the delegating agency.

#### C. Duties of the Department of Education

The Agency for International Development assigns the following compliance duties to the Department of Education with respect to educational institutions. Specifically, the Department of Education shall:

1. Maintain current files on all activities undertaken pursuant to this agreement and on the compliance status of applicants and recipients with respect to their programs or activities receiving Federal financial assistance resulting from preapproval and postapproval reviews, complaint investigations, and actions to resolve noncompliance. A summary of these activities and the compliance status of applicants and recipients shall be reported at least at the end of every fiscal year to the Agency for International Development.

2. Develop and use information for the routine, periodic monitoring of compliance by educational institutions with respect to their programs or activities receiving Federal financial assistance subject to this agreement.

3. Perform, upon request by the Agency for International Development, preapproval reviews for which supplemental information or field reviews are necessary to determine compliance.

4. Conduct an effective program of postapproval reviews of recipients with respect to their programs or activities receiving Federal financial assistance subject to this agreement.

5. Receive complaints alleging that recipients subject to this agreement have discriminated in violation of covered nondiscrimination provisions in their programs or activities receiving Federal financial assistance, attempt to obtain information necessary to make complaints complete, and investigate complete complaints.

6. Issue a written letter of findings of compliance or a letter of findings of noncompliance that (a) advises the recipient and, where appropriate, the complainant of the results of the postapproval review or complaint

investigation; (b) provides recommendations, where appropriate, for achieving voluntary compliance; and (c) offers the opportunity to engage in negotiations for achieving voluntary compliance. The governor of the state in which the applicant or recipient is located will be notified if the letter of findings of noncompliance is made pursuant to a statute requiring that the governor be given an opportunity to secure compliance by voluntary means. The Department of Education promptly shall provide a copy of its letter of findings to the Agency for International Development and to the Assistant Attorney General for Civil Rights.

7. Conduct, after a letter of findings of noncompliance, negotiations seeking voluntary compliance with the requirements of covered nondiscrimination provisions.

8. (a) If compliance cannot be voluntarily achieved, and the Department of Education does not fund the applicant or recipient, refer the matter to the Agency for International Development for its own independent action and notify the Assistant Attorney General for Civil Rights of the referral. (b) If compliance cannot be achieved and both the Department of Education and the Agency for International Development fund the applicant or recipient, initiate formal enforcement action. When the Department of Education initiates formal enforcement action by providing the applicant or recipient with an opportunity for an administrative hearing, provide the Agency for International Development with an opportunity to participate as a party in a joint administrative hearing. When the Department of Education initiates formal enforcement action by referring the matter to the Department of Justice for appropriate judicial action, notify the Agency for International Development of the referral.

9. Notify the Agency for International Development and the Assistant Attorney General for Civil Rights of the outcome of the hearing, including the reasons for finding the applicant or recipient in noncompliance, and any action taken against the applicant or recipient.

**D. Duties of the Agency for International Development**

The Agency for International Development shall:

1. Issue and provide to the Department of Education all regulations, guidelines, reports, orders, policies, and other documents that are needed for recipients to comply with covered nondiscrimination provisions and for the Department of Education to administer its responsibilities under this agreement.

2. Provide the Department of Education with information, technical assistance, and training necessary for the Department of Education to perform the duties delegated under this agreement. This information shall include, but is not limited to, a list of recipients receiving Federal financial assistance from the Agency for International Development, the types of assistance provided, compliance information solely in the Agency for International Development's possession or control, and data on program eligibility and/or actual participants in assisted programs or activities.

3. Perform preapproval reviews of applicants for assistance, as required by 28 CFR 42.407(b), that do not require supplemental information or field reviews. The reviews may require information to be supplied by the Department of Education. If the Agency for International Development requests the Department of Education to undertake an onsite review because it has shown it has reason to believe discrimination is occurring in a program or activity that is either receiving Federal financial assistance or that is the subject of an application, the Agency for International Development shall supply information necessary for the Department of Education to undertake such a review.

4. Refer all complaints alleging discrimination under covered nondiscrimination provisions filed with the Agency for International Development against a recipient subject to this delegation and determine, if possible, whether the program involved receives Federal financial assistance from the Agency for International Development.

5. Where the Department of Education has notified the applicant or recipient in writing that compliance cannot be achieved by voluntary means and the Department of Education has referred the matter to the Agency for International Development, make the final compliance determination and:

(a) If the Agency for International Development wishes to initiate formal enforcement action by providing the applicant or recipient with an opportunity for an administrative hearing, notify the Department of Education if the Agency for International Development will either join as a party in the Department of Education's administrative hearing or will conduct its own administrative hearing.

(b) When the Agency for International Development initiates formal enforcement action by referring the matter to the Department of Justice for appropriate judicial action, notify the Department of Education of the referral.

(c) If the Agency for International Development conducts its own hearing, notify the Department of Education and the Assistance Attorney General for Civil Rights of the outcome of the hearing, including the reasons for finding the applicant or recipient in noncompliance, and any action taken against the applicant or recipient. The Agency for International Development may request the Department of Education to act as counsel in its administrative hearing.

(d) If the Agency for International Development neither initiates steps to deny or terminate Federal financial assistance nor refers the matter to the Department of Justice, notify the Department of Education and the Assistant Attorney General for Civil Rights, in writing, within 15 days after notification from the Department of Education that voluntary compliance cannot be achieved.

**E. Redelegation**

Duties delegated herein to the Department of Education may be redelegated. The Department of Education shall notify the Agency for International Development of any such redelegation prior to its effective date.

**F. Effect on Prior Delegation**

This agreement supersedes and replaces the delegation agreement effective March 30, 1966 between the U.S. Department of Health, Education and Welfare and the Agency for International Development.

**G. Approval**

This agreement shall be signed by the Assistant Attorney General for Civil Rights. It shall be signed by both parties and become effective 30 days from publication in the Federal Register.

**H. Termination**

This agreement may be terminated by either agency 60 days after notice to the other agency and to the Assitant Attorney General for Civil Rights.

Dated: January 24, 1989.

**M. Peter McPherson,**
*Administrator, Agency for International Development.*
**Lauro F. Cavazos,**
*Secretary, Department of Education.*
**Wm. Bradfold Reynolds,**
*Assistant Attorney General, Civil Rights Division, Department of Justice.*
[FR Doc. 89-4484 Filed 2-24-89; 8:45 am]
BILLING CODE 4000-01-M

## DEPARTMENT OF ENERGY

### San Francisco Operations Office, Financial Assistant Award (Grant), Intent To Award a Grant to Tufts University

**AGENCY:** U.S. Department of Energy (DOE), San Francisco Operations Office.

**ACTION:** Pursuant to 10 CFR 600.7(b), the U.S. Department of Energy announces that it is restricting eligibility for award of a (4) four year extension to the existing financial assistance award number DE-FG03-85SF15927 to Tufts University, Electro-Optics Technology Center, because the work is a continuation of research currently funded by DOE, and it would not be cost effective nor technologically efficient to compete this research and development effort, at this time.

Competition for support of this research would have a significantly adverse impact on the continuity of the Solar Buildings Technology Research Program. This research and development effort at Tufts is an integral part of the overall research effort of the Solar Buildings Program, and to compete this work at this time would incur, at a minimum, a loss of time and personnel even if the work were eventually awarded to Tufts. Additional losses in time and increased startup costs would be incurred if awarded to another research facility. These expected losses could severally impact performance of the work scope during the required period of time and significantly harm the program goals.

**SUMMARY:** The U.S. Department of energy intends to award a grant to Tufts University for the purpose of assisting research at the Electro-Optics Technology Center on Electrochromic "Smart Windows". The grant, for four years beginning March 1, 1989, is a continuation of DOE support of this effort at Tufts over the past five years. Under the previous grant Tufts fabricated and evaluated the world's first practical, robust, completely solid state, lithium-based, practical, electrochemically balanced, thin films, electrochromic "smart windows."

Work under this renewal award will consist of the three part strategic program to:

1. Establish models that predict the *a priori*, desired composition structure profiles which will yield "smart windows" with desired properties.
2. Employ and analyze alternative materials which could provide a means of better achieving the desired "smart window" properties.
3. Develop an improved understanding of current and new deposition processes, especially with regard to determining (a) how to reliably control the deposition process in order to consistently obtain the desired window composition and structure profiles and (b) how to significantly increase the deposition rate, yet maintain this deposition control.

**FOR FURTHER INFORMATION CONTACT:** W.E. "Bill" O'Neal, U.S. Department of Energy, San Francisco Operations Office, 1333 Broadway, Oakland, CA 94612.

Issued at Oakland, California, February 10, 1989.

**Kathleen M. Day,**
*Director, Contracts Management Division.*
[FR Doc. 89-4486 Filed 2-24-89; 8:45 am]
BILLING CODE 6450-01-M

## Office of Fossil Energy

**[ERA Docket No. 89-08-NG]**

### ICG Energy Marketing, Inc.; Application to Extend Blanket Authorization to Import Natural Gas From Canada

**AGENCY:** Office of Fossil Energy, DOE.

**ACTION:** Notice of application for extension of blanket authorization to import natural gas from Canada.

**SUMMARY:** The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt on February 6, 1989, of an application filed by ICG Energy Marketing, Inc. (ICG Energy), requesting that the blanket import authorization previously granted in DOE/ERA Opinion and Order No. 130 (Order 130), issued June 12, 1986 (ERA Docket No. 86-23-NG), be amended to extend its term for two years commencing April 1, 1989, and ending March 31, 1991. ICG Energy's current authorization expires March 31, 1989. That blanket authorization allows ICG Energy to import up to a maximum of 25.6 Bcf annually of Canadian natural gas. Under the proposal by ICG Energy, the import volumes would be increased to 36 Bcf per year over the extended term.

The application is filed pursuant to section 3 of the Natural Gas Act and DOE Delegation Order No. 0204-111. Protests, motions to intervene, notices of intervention and written comments are invited.

**DATE:** Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed no later than March 29, 1989.

**FOR FURTHER INFORMATION CONTACT:**

Robert Groner, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, Room 3H-087, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-1657.

Diane Stubbs, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E-042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-6667.

**SUPPLEMENTARY INFORMATION:** ICG Energy, a Delaware corporation with its principal place of business in Calgary, Alberta, is a wholly-owned subsidiary of Canadian Hydrocarbons Marketing, Inc., which, in turn, is a subsidiary of Inter-City Gas Corporation (Manitoba). ICG Energy requests authority to continue to import Canadian gas from affiliated producing entities and a variety of other suppliers located in Canada for sales to U.S. customers on both a short-term, interruptible and firm basis under contract arrangements with annual or semi-annual price redetermination provisions. ICG Energy would import the gas for its own account, as well as for the accounts of suppliers or others participating in a particular transaction.

The specific terms of each import and sale would continue to be negotiated on an individual basis including price and volume. ICG Energy intends to use existing pipeline facilities to transport its gas supplies. ICG Energy states also that it would continue to file quarterly reports giving details of the individual transactions. ICG Energy's prior quarterly reports indicate that approximately 11.8 Bcf of natural gas has been imported under Order 130 through December 1988.

In support of its application, ICG Energy asserts that the proposed extension of its existing blanket import authorization is not inconsistent with the public interest since the extension requested would allow ICG Energy to continue to sell a stable supply of competitively-priced natural gas.

The decision on this application will be made consistent with the DOE's gas import policy guidelines, under which

the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Parties that may oppose this application should comment in their responses on the issue of competitiveness as set forth in the policy guidelines. The applicant asserts that this import arrangement is competitive. Parties opposing the arrangement bear the burden of overcoming this assertion.

**NEPA Compliance**

On August 9, 1988, the DOE published in the **Federal Register** (53 FR 29934) a notice of proposed amendments to its guidelines for compliance with the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.*, effective on an interim basis upon publication. In that notice, the DOE proposed to amend the agency's NEPA guidelines to add to its list of categorical exclusions the approval or disapproval of an import/export authorization for natural gas in cases not involving new construction. Application of the categorical exclusion in any particular case raises a rebuttable presumption that this action is not a major Federal action under NEPA. Unless comments are received indicating the presumption does not or should not apply in this case, no further NEPA review will be conducted by the DOE.

**Public Comment Procedures**

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590.

Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs, Fossil Energy, Room 3F-056, FE-50, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478. They must be filed no later than 4:30 p.m., e.s.t., March 29, 1989.

It is intended that a decisional record on the application will be developed through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice to all parties will be provided. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of ICG Energy's application is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, February 22, 1989.

**J. Allen Wampler,**

*Assistant Secretary Fossil Energy.*

[FR Doc. 89-4638 Filed 2-24-89; 8:45 am]

BILLING CODE 6450-01-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Office of the Secretary

### Assistant Secretary for Management and Budget; Delegation of Authority To Approve Waivers to the Federal Information Processing Standards

By authority delegated to me by the Secretary of Commerce, on November 14, 1988, under section 111(d) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 759(d)), as amended, I hereby delegate to the Assistant Secretary for Management and Budget (ASMB) authority to waive requirements of the Federal Information Processing Standards (FIPS) pursuant to section 3506(b) of Title 44, U.S. Code.

Waivers shall be granted only when:

a. Compliance with a standard would adversely affect the accomplishment of the mission of an operator of a Federal computer system, or

b. Cause a major adverse financial impact on the operator which is not offset by Government-wide savings.

This delegation may not be redelegated and is effective upon the date of my signature. In addition, I hereby ratify and affirm any actions taken by the ASMB which, in effect, involve the exercise of this authority prior to the effective date of this delegation.

Dated: February 15, 1989.

**Don M. Newman,**

*Acting Secretary.*

[FR Doc. 89-4417 Filed 2-4-89; 8:45 am]

BILLING CODE 4110-60-M

### Assistant Secretary for Management and Budget; Delegation of Authority; Waivers for Federal Information Processing Standards

Notice is hereby given that I have delegated to the Assistant Secretary for Management and Budget (ASMB) authority to waive the requirements of the Federal Information Processing Standards (FIPS), under section 3506(b) of Title 44, U.S. Code, for the Department of Health and Human Services. This authority was delegated to me by the Secretary of Commerce on November 14, 1988, under section 111(d) of the Federal Property and Administrative Services Act of 1949 (40 U.S. Code 759(d)), as amended.

Waivers shall be granted only when:

- Compliance with a standard would adversely affect the accomplishment of the mission of an operator of a Federal computer system, or
- Cause a major adverse financial impact on the operator which is not offset by Government-wide savings.

This delegation may not be redelegated and is effective upon the date of my signature. In addition, I hereby ratify and affirm any actions taken by the ASMB which, in effect, involve the exercise of this authority prior to the effective date of this delegation.

Dated: February 15, 1989.

**Don M. Newman,**

*Acting Secretary.*

[FR Doc. 89-4418 Filed 2-24-89; 8:45 am]

BILLING CODE 4110-60-M

## Alcohol, Drug Abuse, and Mental Health Administration

## Substance Abuse Prevention Conference Grant

**AGENCY:** Office for Substance Abuse Prevention, ADAMHA, HHS.

**ACTION:** Program Announcement Notice AD-89-A.

### Introduction and Backround

The Office for Substance Abuse Prevention (OSAP) announces a program to support domestic conferences for the purpose of coordinating, exchanging, and disseminating information in furtherance of OSAP's mission to prevent alcohol and other drug abuse. This support is provided under section 508 of the Public Health Service Act. Applications are invited for conferences relating to substance abuse prevention, including conferences for the purposes of information dissemination to the services community and the general public, and national strategy development for substance abuse prevention.

The intended audiences for this announcement are principally the consumer and services-oriented constituency groups—including those representing State and local governments, professional associations, voluntary organizations and self-help groups which share mutual interests with OSAP relating to community consensus building, leadership, and advocacy of our national goals.

### Program Goals

OSAP will assist in supporting planned meetings and conferences sponsored by new or ongoing constituent organizations or coalitions in their efforts to prevent alcohol and other drug abuse. Priority consideration will be given to applications which demonstrate the potential for knowledge dissemination, interface with health promotion concepts and practices, resource utilization and/or consensus building in furtherance of the OSAP mission of combating alcohol and other drug abuse.

*Definitions*

The following definitions apply to this grant program:

1. *Conference* [1]—a symposium, seminar, workshop, or any other organized and formal meeting lasting one or more days where persons assemble to exchange information and address information or strategy development needs in such areas as sharing new technologies, problem-solving, network-building or public policy deliberations.

2. *Eligible Grantee*—all public and private, profit and not for profit entities may apply. An individual is not eligible to receive grant support for a conference.

### Period of Support

Awards will be made for a maximum of 12 months and most frequently will be for shorter periods.

### Availability of Funds

For FY 1989, it is estimated that approximately $1,000,000 will be available for constituencies-initiated conferences. It is expected that awards will be limited to no more than $50,000 for any one conference. OSAP may fund in whole or in part any or all of the applications submitted based upon the results of application review.

### Application Procedure

Application materials (PHS 398; rev. 9/86 and PHS 5161-1; rev. 4/88) are available from:

National Clearinghouse for Alcohol and Drug Information (NCADI), P.O. Box 2345, Rockville, Maryland 20852, Telephone: (301) 468-2600.

State and local governments should use Form PHS 5161-1. The title of this Announcement, "Substance Abuse Prevention Conference Grant", AD 89-A, should be typed in item 9 on the face page of the PHS 5161-1. Other applicants should use Form PHS 398 and identify the title and number of the announcement in item 2.

Applicants should return the signed original and two permanent, legible copies (if using form PHS 5161-1) or six copies (if using form PHS 398) to:

OSAP Programs, Division of Research Grants, National Institutes of Health, 5333 Westbard Avenue, Bethesda, Maryland 20892.

IMPORTANT—The mailing envelope (including that provided by an express carrier) must be clearly marked "OSAP Conference Grant Program"

It is requested that those applicants submitting for the May 15, 1989 deadline, an additional copy of the application be sent directly to:

Dr. Salvatore Cianci, Associate Director for Program Coordination and Review, Office for Substance Abuse Prevention, ADAMHA, c/o NCADI, P.O. Box 2345, Rockville, Maryland 20852.

Applications submitted in response to this announcement are subject to the intergovernmental review requirements of Executive Order 12372, "Intergovernmental Review of Federal Programs," as implemented through Department of Health and Human Services Regulations at 45 CFR Part 100. Through this process, States, in consultation with local governments, are provided the opportunity to review and comment on applications for Federal financial assistance. Applicants should contact the State's Single Point of Contact (SPOC) as early as possible to determine the applicable procedure. A current listing of SPOCs will be enclosed with the application kit. Applicants should note that comments received from the State will be considered as a factor in the review of their applications. SPOC comments should be sent to the Executive Secretary, Initial Review Group no later than 60 days after the relevant receipt date. Applicants will be informed as to the Executive Secretary's name and address after receipt of the application.

*Application Characteristics*

The narrative section should be written in a manner that is self-explanatory to outside reviewers unfamiliar with prior related activities of the applicant. It must be well-organized and contain the information necessary for reviewers to understand the project. Sections A-E may not exceed a total length of 10 single spaced pages. Applications exceeding these page limits for the narrative section will not be accepted for review. The page limit will be rigorously enforced. Returned applications will be eligible for resubmission, after appropriate revisions, at the next application receipt date. Appendices may be attached for specialized materials but should not be used merely to extend the narrative.

*Abstract*—This should precede the body of the narrative, be single spaced and not exceed 30 lines. Included in the abstract should be:

- The title of the conference;
- Location of the conference
- Inclusive dates of the conference;
- Expected number of registrants and type of audience.
- Major purpose of the conference.

[1] Conferences supported by this program are *not* intended to synthesize or disseminate research information for the scientific research community.

*Index Page*—Immediately following the abstract page the applicant will be required to provide an index page identifying the page where each section of the outline begins.

The following sections A–E replace the general insturctions for completing Part II (research plan) of the application form 398 or Part IV (program narrative) of the application form PHS 5161–1:

A. *Specific Aims*

Specific objectives of the conference, including the target audience and any developments it may stimulate;

B. *Background and Significance*

Justification of the conference, including potential national or regional significance for the field of substance abuse, the problems it intends to clarify and the developments it may stimulate; Information about all related conferences held on this subject during the last three years (if known) and a description of how the conference will relate to these past relevant activities;

C. *Approach/Method*

Conference format and proposed agenda, including list of principal areas or topics to be addressed, names of key participants with their credentials, and the basis for selection of topics and participants.

D. *Project Management Plan*

Composition and role of the organizing or planning committee, including brief biographical sketches of individuals responsible for planning the conference;

E. *Resources*

Using the budget pages of form PHS 398 or form PHS 5161–1, applicant should present the budget requested from OSAP in each of the following five categories. Support requested from OSAP may not exceed $50,000.

- Personnel—Itemize and prorate salary for professional and non-professional staff for the amount of time spent on the meeting.
- *Equipment*—Itemize rental costs, projection, PA systems, exhibits, phones, etc.
- *Supplies*—Itemize stationary, mailings, telegraph, etc.
- *Travel*—Itemize travel costs for staff, speakers, participants; itemize per diem or actual charges for staff and participants, specify number of days and number of people.
- *All Other Expenses*—Itemize costs for: printing programs, notices, badges, signs, etc.; registration fees, rental of conference space, recording and editorial services, and translation and report costs.

In addition, in section E, identify other sources of support for this conference and indicated the planned budget categories, if known.

*Review Process*

Applications submitted in response to this program announcement will be reviewed in accordance with ADAMHA peer review procedures for grants. Applicants should be sure to submit completed applications. OSAP staff will screen applications upon receipt and return those that are judged to be incomplete, non-responsive to this announcement or non-conforming (e.g., exceed the page limits). Returned applications will *not* be accepted for this review schedule but may be submitted for the next receipt/review cycle, if the review and conference schedules are compatible. Applications judged to be conforming, responsive, and competitive will be reviewed for technical merit in accord with the PHS and ADAMHA policies for peer review. The review group(s) (IRG) will be composed primarily of non-Federal experts. Notification of the review outcome will be sent to the applicant upon completion of the initial review. In addition, the recommendations of the technical merit review groups may be submitted for information and additional consultation to an OSAP Advisory Board.

Applicants submitting applications for the first receipt date who are unsuccessful in receiving funding may submit a revised application for scheduled future receipt dates, if that schedule is compatible with the planned conference.

*Review Criteria*

Criteria for review of applications will include the following:

- Potential regional or national significance of the conference for the field of alcohol and drug abuse prevention;
- Clarity and justification of overall objectives, aims, and goals of the conference:
- Manner in which the conference is planned and organized, presence of an administrative and organizational structure that will facilitate attainment of the proposed objective(s) of the conference;
- Qualifications and experience of project staff, principal director, and other key personnel;
- Participation of appropriate speakers or presenters;
- Adequacy of proposed facilities and resources;
- Appropriateness of the budget, staffing plan, and time frame to complete the conference.

*Award Criteria*

Applications will be considered for funding on the basis of overall technical merit of the project as determined by the review process. Other criteria will include:

- Program balance and relevance to the areas of alcohol and other drug abuse prevention.
- Availability of funds.

*Terms and Conditions of Support*

Assistance will be provided in the form of a discretionary grant. Grant funds may be used only for those expenses clearly related to and necessary to carry out the approved conference activities. Indirect costs are *not* allowed under this program. It should also be noted that *no profit or fee* will be provided to for-profit organizations.

Grants must be administered in conformance with the *Public Health Service Grants Policy Statement* (Rev. January 1, 1987), which is available for $4.50 from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. When ordering copies, the GPO stock number, GPO 017–020–00092–7, should be referenced.

*OSAP Application Receipt and Review Schedule*

*For Initial Receipt, Receipt Date*
May 15,1989
*IRG Review*
July 15, 1989
*Earliest Start Date*
September, 1989

*Subsequent Receipt and Review Schedule* (This schedule is subject to change in accordance with program priorities)

*Receipt Date*
November 15, 1989
April 15, 1990
*IRG Review*
February, 1989
July, 1990
*Earliest Start Date*
April, 1989
September, 1990

Applications received after the above receipt dates are subject to assignment to the next review cycle or may be returned to the applicant.

*Reporting Requirements*

Grantees are responsible for submitting the following reports to the Office for Finance, Policy, and Planning, OSAP within 90 days after upon completion or termination of a grant in support of a conference:

A final progress report which should include:

a. The grant number;

b. The title, date, and place of the conference;

c. The name of the person shown on the application as the conference director or program director;

d. Name(s) of the organization(s) that conducted the conference;

e. List of the individuals who participated as speakers or discussants in the formally planned sessions of the meeting and their organizational affiliations;

f. Copies of papers/speeches presented at the conference;

g. A summary of the conference proceedings.

Publications resulting from the meeting must also be submitted when available.

• A final status (expenditure) report. Records of expenditures must be maintained in accordance with the provisions of 45 CFR Part 74, Subpart D.

*Contacts for Additional Information*

Office for Finance, Planning, and Evaluation, Room 9-A-54, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443-0365.

The Catalog of Federal Domestic Assistance number for this program is 13.174.

**Joseph R. Leone,**

*Associate Administrator for Management, Alcohol, Drug Abuse, and Mental Health Administration.*

[FR Doc. 89-4412 Filed 2-24-89; 8:45 am]

BILLING CODE 4160-20-M

## Food and Drug Administration

**[Docket No. 89F-0038]**

## American Cyanamid Co.; Filing of Food Additive Petition

**AGENCY:** Food and Drug Administration.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that a food additive petition has been filed by American Cyanamid Co. proposing that the food additive regulations be amended to provide for the safe use of sulfosuccinic acid 4-ester with polyethylene glycol dodecyl ether, disodium salt, as an emulsifier in polyvinyl acetate, acrylic, and vinyl/acrylic polymers for food-contact coatings.

**FOR FURTHER INFORMATION CONTACT:** Marvin D. Mack, Center for Food Safety and Applied Nutrition (HFF-334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

**SUPPLEMENTARY INFORMATION:** Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 9B4120) has been filed by American Cyanamid Co., One Cyanamid Plaza, Wayne, NJ 07470, proposing that § 178.3400 *Emulsifiers and/or surface-active agents* (21 CFR 178.3400) be amended to provide for the safe use of sulfosuccinic acid 4-ester with polyethylene glycol dodecyl ether, disodium salt, as an emulsifier in polyvinyl acetate, acrylic, and vinyl/acrylic polymers for food-contact coatings.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: February 17, 1989.

**Richard J. Ronk,**

*Acting Director, Center for Food Safety, and Applied Nutrition.*

[FR Doc. 89-4414 Filed 2-24-89; 8:45 am]

BILLING CODE 4160-01-M

**[Docket No. 89N-0062]**

## Drug Export; Ibuprofen Caplets, 200 MG. (Capsule Shaped Tablet)

**AGENCY:** Food and Drug Administration.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that Par Pharmaceutical, Inc., has filed an application requesting approval for the export of the human drug *Ibuprofen Caplets,* 200 MG. (Capsule Shaped Tablet) to Canada.

**ADDRESS:** Relevant information on this application may be directed to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of human drugs under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

**FOR FURTHER INFORMATION CONTACT:** Rudolf Apodaca, Division of Drug Labeling Compliance (HFD-310), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8063.

**SUPPLEMENTARY INFORMATION:** The Drug Export Amendments Act of 1986 (Pub. L. 99-660) (section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382)) provides that FDA may approve applications for the export of drugs that are not currently approved in the United States. The approval process is governed by section 802(b) of the act. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the **Federal Register** within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that Par Pharmaceutical, Inc., One Ram Ridge Rd., Spring Valley, NY 10977, has filed an application requesting approval for the export of the drug *Ibuprofen Caplets,* 200 MG. (Capsule Shaped Tablet), to Canada. This product is used for the temporary relief of minor aches and pains associated with the common cold, headache, toothache, muscular aches, backache, for the minor pain of arthritis, for the pain of menstrual cramps, and for reduction of fever. The application was received and filed in the Center for Drug Evaluation and Research on February 13, 1989, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by March 9, 1989, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802, Pub. L. 99-660 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Drug Evaluation and Research (21 CFR 5.44).

Dated: February 16, 1989.

**Daniel L. Michels,**

*Director, Office of Compliance, Center for Drug Evaluation and Research.*

[FR Doc. 89-4453 Filed 2-24-89; 8:45 am]

**BILLING CODE 4160-01-M**

## Advisory Committees; Meetings

**AGENCY:** Food and Drug Administration.

**ACTION:** Notice.

**SUMMARY:** This notice announces forthcoming meetings of public advisory committees of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meetings and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

*Meetings:* The following advisory committee meetings are announced:

### Gastrointestinal Drugs Advisory Committee

*Date, time, and place.* March 15 and 16, 1989, 9 a.m., Conference Rms. D and E, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD.

*Type of meeting and contact person.* Open public hearing, March 15, 1989, 9 a.m. to 10 a.m., unless public participation does not last that long; open committee discussion, 10 a.m. to 5 p.m.; open committee discussion, March 16, 1989, 9 a.m. to 2 p.m.; closed committee deliberations, 2 p.m. to 4 p.m.; Joan C. Standaert, Center for Drug Evaluation and Research (HFD-180), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-0479 or 419-259-6211.

*General function of the committee.* The committee reviews and evaluates available data on the safety and effectiveness of marketed and investigational new drugs for use in the treatment of gastrointestinal and blood coagulation disorders and diseases and makes recommendations regarding the appropriate clinical development of such products.

*Agenda—Open public hearing.* Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person as soon as possible.

*Open committee discussion.* On March 15, 1989, the committee will discuss Losec (omeprazole), new drug application (NDA) 19-810, Merck & Co., to be indicated for acute duodenal ulcer, gastroesophageal reflux disease, Zollinger-Ellison syndrome, and other hypersecretory conditions; and on March 16, 1989, the committee will discuss Motilium® (domperidone), NDA 19-472, Janssen Pharmaceutica, Inc., to be indicated for diabetic gastroparesis.

*Closed committee deliberations.* The committee will discuss trade secret or confidential commercial information relevant to pending and future applications for a drug intended for gastrointestinal use. This portion of the meeting will be closed to permit discussion of this material (5 U.S.C. 552b(c)(4)).

### Blood Products Advisory Committee

*Date, time, and place.* March 23, 1989, 9 a.m., Jack Masur Auditorium, Varren Grant Magnuson Clinical Center, Bldg. 10, National Institutes of Health, 9000 Rockville Pike, Bethesda, MD.

*Type of meeting and contact person.* Open public hearing, 9 a.m. to 10 a.m., unless public participation does not last that long; open committee discussion, 10 a.m. to 11:30 a.m.; closed committee deliberations, 12:30 p.m. to 1:30 p.m.; open committee discussion, 1:30 p.m. to 2:30 p.m.; Linda A. Smallwood, Center for Biologics Evaluation and Research (HFB-400), Food and Drug Administration, 8800 Rockville Pike, Bethesda, MD 20892, 301-496-4396.

*General function of the committee.* The committee reviews and evaluates available data on the safety, effectiveness, and appropriate use of blood products intended for use in the diagnosis, prevention, or treatment of human diseases.

*Agenda—Open public hearing.* Interested persons requesting to present data, information, or views, orally or in writing, on issues pending before the committee should notify the committee contact person.

*Open committee discussion.* The committee will discuss the approvability of the Abbott HIV Antigen EIA test.

*Closed committee deliberations.* The committee will discuss trade secret or confidential commercial information relevant to the pending biological product license application. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Each public advisory committee meeting listed above may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. The dates and times reserved for the separate portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (Subpart C of 21 CFR Part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR Part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

Persons interested in specific agenda items to be discussed in open session may ascertain from the contact person the approximate time of discussion.

Details on the agenda, questions to be addressed by the committee, and a current list of committee members are available from the contact person before and after the meeting. Transcripts of the open portion of the meeting will be available from the Freedom of Information Office (HFI-35), Food and Drug Administration, Room 12A-16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA-305), Food and Drug Administration, Room 4-62, 5600 Fishers Lane, Rockville, MD 20857.

approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting will be available from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

The Commissioner, with the concurrence of the Chief Counsel, has determined for the reasons stated that those portions of the advisory committee meetings so designated in this notice shall be closed. The Federal Advisory Committee Act (FACA), as amended by the Government in the Sunshine Act (Pub. L. 94–409), permits such closed advisory committee meetings in certain circumstances. Those portions of a meeting designated as closed, however, shall be closed for the shortest possible time, consistent with the intent of the cited statutes.

The FACA, as amended, provides that a portion of a meeting may be closed where the matter for discussion involves a trade secret; commercial or financial information that is privileged or confidential; information of a personal nature, disclosure of which would be a clearly unwarranted invasion of personal privacy; investigatory files compiled for law enforcement purposes; information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action; and information in certain other instances not generally relevant to FDA matters.

Examples of portions of FDA advisory committee meetings that ordinarily may be closed, where necessary and in accordance with FACA criteria, include the review, discussion, and evaluation of drafts of regulations or guidelines or similar preexisting internal agency documents, but only if their premature disclosure is likely to significantly frustrate implementation of proposed agency action; review of trade secrets and confidential commercial or financial information submitted to the agency; consideration of matters involving investigatory files compiled for law enforcement purposes; and review of matters, such as personnel records or individual patient records, where disclosure would constitute a clearly unwarranted invasion of personal privacy.

Examples of portions of FDA advisory committee meetings that ordinarily shall not be closed include the review, discussion, and evaluation of general preclinical and clinical test protocols and procedures for a class of drugs or devices; consideration of labeling requirements for a class of marketed drugs or devices; review of data and information on specific investigational or marketed drugs and devices that have previously been made public; presentation of any other data or information that is not exempt from public disclosure pursuant to the FACA, as amended; and, notably deliberative sessions to formulate advice and recommendations to the agency on matters that do not independently justify closing.

This notice is issued under sections 10(a) (1) and (2) of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770–776 (5 U.S.C. App. I)), and FDA's regulations (21 CFR Part 14) on advisory committees.

Dated: February 20, 1989.

**Frank E. Young,**

*Commissioner of Food and Drugs.*

[FR Doc. 89–4413 Filed 2–24–89; 8:45 am]

BILLING CODE 4160–01–M

## Social Security Administration

## Privacy Act of 1974; Computer Matching Program

**AGENCY:** Social Security Administration (SSA), Department of Health and Human Services (HHS).

**ACTION:** Notice of Computer Matching Program—SSA/Federal Bureau of Prisons (FBP)/State Prison Records—Expansion of the Federal and State Prison Records Matching Program.

**SUMMARY:** SSA is issuing public notice of its intent to expand the prison records matching program to encompass matching Federal and State prison records with its Privacy Act system of records entitled "Supplemental Security Income Record, HHS/SSA/OSR, 09–60–0103" (hereinafter referred to as the SSR) (last published in the **Federal Register** (FR) at 47 FR 45635, October 13, 1982). State and FBP penal records contain information which may impact on an individual's eligibility for, or amount of, payments under the Supplemental Security Income (SSI) program, title XVI of the Social Security Act (the Act).

Currently, the prison record matching program is an interface between SSA's Master Beneficiary Record (MBR) system of records (last published in the FR at 51 FR 16223, May 1, 1986) and the felony prison files of State and FBP penal institutions. The authority for the current match is section 202(x) of the Act (42 U.S.C. 402(x)) which precludes the payment of Retirement, Survivors, and Disability Insurance benefits under title II of the Act to prisoners who were incarcerated for the commission of felonies. The expanded program will allow for a comparison of the SSR with prison records on felons already obtained for matching with the MBR, and with prison records on nonfelons. The purpose of the expanded program is to detect those cases where incarceration precludes SSI eligibility pursuant to section 1611(e)(1)(A) of the Act (42 U.S.C. 1382(E)(1)(A)) (i.e., the individual was an inmate throughout one or more calendar months).

**DATES:** Data exchanges involving FBP and State prison records and the MBR have been performed since 1981. Under the expanded program, data exchanges involving these records and the SSR are planned for calendar year 1989 unless we receive comments which result in a contrary determination. Periodic recontacts with the FBP and with State penal institutions may be necessary in the future in order to identify incarcerated individuals.

**ADDRESSES:** Interested individuals may comment on this notice by writing to the SSA Privacy Officer, Social Security Administration, 3–F–1 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235. All comments received will be available for public inspection at this address.

**FOR FURTHER INFORMATION CONTACT:**

(1) For that portion of the matching program which pertains to the SSR, the appropriate contact is Mr. Gareth Dence, Program Quality Branch, Office of Supplemental Security Income, Social Security Administration, 3–P–1 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235, telephone (301) 965–9862.

(2) For that portion of the matching program which pertains to the MBR, the appropriate contact is Mr. William Browne, Special Programs Branch, Office of Disability, Social Security Administration, 3–A–10 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235, telephone (301) 965–7685.

(3) For that portion of the matching program which pertains to systems aspects of the match, the appropriate contact is Mr. Charles Martin, Chief, State and Federal Programs Interface Branch, Office of System Requirements, Social Security Administration, 3–Q–11 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235, telephone (301) 965–5454.

**SUPPLEMENTARY INFORMATION:** The current matching program initially resulted from former subsection (f) of section 223 of the Act which precluded

the payment of Social Security title II Disability Insurance benefits to certain prison inmates who are convicted felons. Subsequently, subsection (f) of section 223 was repealed and section 202(x) of the Act was added, precluding persons incarcerated for committing felonies from receiving Retirement and Survivors Insurance benefits as well as Disability Insurance benefits.

We originally reported the Federal and State Prison Records matching program to the Office of Management and Budget (OMB) and Congress on April 14, 1981, as required by the then applicable OMB matching guidance published in the FR on August 4, 1978, and effective on April 4, 1979. The matching program as described at that time consisted of an interface between SSA's MBR and felony prisoner records of the FBP and State penal institutions. We considered the matching program desirable because it insured accurate reporting of incarceration, thereby assisting us in determining whether we are making correct payments of title II benefits.

Our experience with the title II prisoner matching program has shown that incarceration records can be used to determine eligibility for SSI payments. Section 1611(e)(1)(A) of the Act precludes the payment of SSI benefits to any person who is an inmate of a public institution throughout any month. We, therefore, are announcing our intent to match the SSR with FBP and State prisoner records. While the title II prisoner matching program involved only FBP and State felony prisoner records, the proposed expanded matching program involving the SSI records will include matching with nonfelony prisoner records as well. The expanded matching program will help us make timely, proper payment of Retirement, Survivors, and Disability Insurance and SSI payments, and help us prevent and detect erroneous payments.

Further information regarding the prison record matching program, including the authority for the program, a description of the program, the records to be matched, the dates of the program, security safeguards, and plans for disposition of the records are provided in the notice below. This information is required by paragraph 5.f.1 of the Revised Supplemental Guidance for Conducting Computerized Matching Programs (47 FR 21656, May 19, 1982). A copy of the notice has been provided to both Houses of Congress and to OMB.

Dated: February 16, 1989.

**Dorcas R. Hardy,**

*Commissioner of Social Security.*

**Computer Matching Program**

*Social Security Administration (SSA) Matching With Federal and State Prison Records—Expansion of Existing Matching Program*

A. *Authority.* Sections 202(x), 1611(e)(1)(A), and 1631(f) of the Social Security Act (the Act) (42 U.S.C. 402(x), 1382(e)(1)(A), and 1383(f)).

B. *Description of the Computer Matching Program.*

1. Organizations Involved

SSA, the Federal Bureau of Prisons (FBP), Department of Justice, and State prison systems.

2. Purpose

This matching program resulted from the enactment of former subsection 223(f) of the Act which required SSA to suspend the Disability Insurance benefits payable under title II of the Act to certain beneficiaries who were incarcerated for the commission of felonies.

In April 1983, subsection (f) of section 223 was repealed and subsection (x) was added to section 202 of the Act to provide for suspension of Retirement and Survivors Insurance benefits as well as Disability Insurance benefits payable under title II to incarcerated felons. The matching program was instituted in 1981 and involved matching SSA's Privacy Act system of records entitled "Master Beneficiary Records" (MBR) with FBP and State felony prison records. A notice of the matching program was reported to the Office of Management and Budget (OMB) and the Congress as required by the OMB matching guidelines in effect at that time.

Section 1611(e)(1)(A) of the Act states that all individuals who are inmates of public institutions throughout any month are not eligible for Supplemental Security Income (SSI) payments under title XVI of the Act for that month. To assist us in identifying such individuals, we are expanding the current prison records matching program to allow matching of FBP and State prison records with SSI records which are maintained in our system of records entitled "Supplemental Security Income Record" (SSR).

While the title II matching program involves matching with only felony prisoner records, the expanded matching program involving the SSI records will include matching with nonfelony prisoner records as well. We will request the nonfelony prisoner records from FBP and the States after the expanded matching program becomes effective. The additional matching will serve to detect and/or prevent erroneous SSI payments.

3. *Procedures.* Generally, using the Social Security number (SSN), we will attempt to match each record received from FBP and State prison authorities against the MBR and the SSR systems of records. We will consider a record a nonmatch if the SSNs do not agree. If the SSNs agree, we will use the identifying information in the penal records to ensure that the correct individual is identified on the MBR or SSR before taking any action on payments to the individual.

For those records matched, action will be taken to assure that title II benefits/SSI payments are being paid properly. The FBP and State information matched against the SSR will be treated as a third party lead requiring confirmation prior to proposed payment adjustment. Further development of the case by SSA will be undertaken before any benefits/payments are suspended. We will make no further subsequent contacts with FBP or the States as part of these matches, except in specific cases where issues which arise from the matches must be resolved.

C. *Records to be Matched.* SSA will institute a computerized match of the MBR (last published in the Federal Register (FR) at 51 FR 16223, May 1, 1986) and the SSR (last published at 47 FR 45635, October 13, 1982) against identifying information received from the FBP Central Records System, Justice/BOP-005 and State-maintained prison records. The FBP and State records contain information about prisoner incarceration. Included in this information is the prisoner's SSN, name, date of birth, sex, date of confinement, and length of sentence (used to determine felony and nonfelony convictions).

D. *Projected Starting and Ending Dates.* The first matches under the expanded program are scheduled to occur in calendar year 1989. Periodic recontacts with the States and FBP may be necessary in the future in order to identify incarcerated individuals. The cost-effectiveness of the matches under the expanded matching program will determine whether they are continued, expanded, or terminated.

E. *Security Safeguards.* Security safeguards pertaining to the MBR and SSR as reflected in the FR notices (referenced above) for these systems will apply to the matching operation. All magnetic tapes and disks are maintained within an enclosure

attended by security guards. Anyone entering or leaving this enclosure must have a special badge which is issued only to authorized personnel. All microfilm and paper files are accessible only to authorized personnel with a need to know. Safeguards include a lock/unlock password system, exclusive use of leased telephone lines, a terminal-oriented transaction matrix, and an audit trail. The same safeguards will apply to FBP and State tapes while they are in SSA's possession.

F. *Disposition of Records.* Data received from FBP and State prison records will be used only for the purpose of this matching program. The tapes will be returned to these agencies after SSA completes the matching operation. A record of the matches will be placed in the claims folders of selected individuals. Information regarding suspensions of title II benefits and terminations of SSI eligibility will be incorporated into the MBR and the SSR. Printouts of matched records will be disposed of by SSA field office personnel in accordance with the appropriate Federal Records Retention Schedule (44 U.S.C. 3303a).

G. *Other Comments.* For those records matched, SSA will take proper action to assure that Retirement, Survivors, and Disability Insurance and SSI payments are being, made properly. No changes will be made to an individual's payments without providing him/her due process (advance notice of the action to be taken and an opportunity for an appeal after the action is taken).

[FR Doc. 89-4426 Filed 2-24-89; 8:45 am]

BILLING CODE 4190-11-M

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

### Office of the Assistant Secretary for Public and Indian Housing

**[Docket No. N-89-1934; FR-2611]**

### Public Housing Program; Demolition or Disposition of Public Housing Projects; Application Submission Deadline; Correction

**AGENCY:** Office of the Assistant Secretary for Public and Indian Housing, HUD.

**ACTION:** Notice; correction.

**SUMMARY:** The purpose of this document is to correct an erroneous application deadline date for the notice regarding the demolition or disposition of public housing projects that was published in the **Federal Register** on February 14, 1989 (54 FR 6772).

**FOR FURTHER INFORMATION CONTACT:** Janice Rattley, Director, Project Management Division, Office of Public and Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone, (202) 755-1800. (This is not a toll-free number.)

**SUPPLEMENTARY INFORMATION:** On February 14, 1989 (54 FR 6772), the Department published a notice announcing the application submission deadline date for PHAs to submit demolition or disposition applications that involved the loss of public housing units and called for assisted housing units to satisfy requirements for a replacement housing plan.

This document corrects an erroneous deadline date that was given in the **SUMMARY** of that notice.

Accordingly, the following correction is made in FR Doc. 89-3395, that appeared in the **Federal Register** on February 14, 1989 (54 FR 6772), as follows:

On page 6772, second column, in the **SUMMARY,** fourth line, correct the date "March 31, 1989" to read "April 14, 1989".

**Authority:** Sec. 18, U.S. Housing Act of 1937 (42 U.S.C. 1437p); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: February 22, 1989.

**Grady J. Norris,**

*Assistant General Counsel for Regulations.*

[FR Doc. 89-4482 Filed 2-24-89; 8:45 am]

BILLING CODE 4210-33-M

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[WY-060-09-4920-10-9335, WYW97410 FD and PT]**

### Proposed Exchange; Schedule for Public Meetings

**AGENCY:** National Park Service, Interior; Bureau of Land Management, Interior.

**ACTION:** Notice of public meetings.

**SUMMARY:** This notice announces the scheduled date and place for public meetings to receive comments on the public interest factors for an exchange involving Federal coal in Sheridan County, Wyoming for a conservation easement within the JY Ranch, a private inholding in the Teton National Park near Jackson, Wyoming.

**DATES AND MEETING PLACE:** Monday, March 13, 1989, 7:00 p.m., Town Hall Council Chambers, Jackson, WY 83001.

Wednesday, March 15, 1989, 7:00 p.m., Holiday Inn, 1809 Sugarland Drive, Sheridan, WY 82801.

**FOR FURTHER INFORMATION CONTACT:** All comments and any further information should be addressed to: James W. Monroe, District Manager, Casper District Office, Bureau of Land Management (BLM), 1701 East "E" Street, Casper, Wyoming 82601 (307) 261-5101).

**SUPPLEMENTARY INFORMATION:** On August 9, 1985 Mr. Laurence S. Rockefeller and Former Secretary of Interior, Donald P. Hodel signed an agreement to pursue an exchange of Federal coal for a conservation easement on Rockefeller's JY Ranch.

In April of 1986, Mr. Rockefeller, the exchange proponent followed with a formal exchange proposal to the Bureau of Land Management which manages the Federal coal reserves.

In December, 1987 Mr. Rockefeller donated this conservation easement to Sloan-Kettering Institute for Cancer Research. The Slone Kettering Institute is the exchange proponent of record.

Specifically, the exchange proposal is a 1,106-acre conservation easement on the JY Ranch in Teton County for approximately 200 million tons of recoverable Federal coal on a 2,500-acre tract referred to as the Young's Creek Exchange Area in Sheridan County, Wyoming. The Young's Creek Exchange Area lies in all or portions of Sections 22, 23, 25, 26, 27, 34 and 35; T. 58 N., R. 84 W., 6th P.M. The conservation easement of the JY Ranch is described by metes and bounds. It is within parts of sections 4, 5, 6 and 8 of T. 42 N., R. 46 W., 6th P.M.

The National Park Service and the Bureau of Land Management are soliciting public comments on the public interest factors of the exchange proposal (BLM Manual 2200.04B) at these scheduled meetings. Comments may be submitted in writing or expressed verbally at the meetings. Comments on these public interest factors for this proposed exchange may also be sent to the Casper District Office, Bureau of Land Management. They must be received in this office no later than March 31, 1989. The specific areas of interest for l:comments are as follows:

(1) What, if any, are the environmental impacts of the proposed exchange?

(2) What are the impacts of the proposed exchange on competitive coal leasing?

(3) Comments or thoughts on public interest involved with processing the proposal.

(4) Comments on the benefits associated with neither the private easement to be acquired or the Federal coal to be transferred into private ownership.

Copies of the manual release containing the complete list of public interest factors may be obtained upon request from the Casper District Office.

The procedures for the meeting will be established by the authorized officer and announced at the commencement of the meeting.

Date: February 17, 1989.

**James W. Monroe,**

*District Manager.*

[FR Doc. 89-4393 Filed 2-24-89; 8:45 am]

BILLING CODE 4310-22-M

## National Park Service

### Proposed Upgrade of Concessioner Housing, Yosemite National Park, CA; Intention To Prepare an Environmental Impact Statement

*Summary:* In accordance with section 102(2)(C) of the National Environmental Policy Act of 1969, Pub. L. 91-190, the National Park Service, Yosemite National Park, is preparing an environmental impact statement to assess the impacts of upgrading concessioner housing in the Yosemite Lodge area of Yosemite National Park. The proposal would allow for the replacement of some substandard existing housing in Yosemite Valley. This would be accomplished through the proposed construction of three new two-story and two new three-story dormitory units and the addition of a second floor to five existing dormitory units. The new units would replace substandard housing now existing at Camp Six (76 tents and four outbuildings), the Lodge Annex (31 without bath units and 3 outbuildings), the Ozone (48 tents and 1 outbuilding), and 10 tents from the Camp Curry Boys Town Terrace area. The total number of employees housed will remain the same, this proposal will not call for housing expansion, only replacement and upgrading.

The environmental impact statement will assess this proposal, along with a variety of other alternatives under consideration. When completed, the environmental impact statement will be submitted for public review.

Persons wishing to comment upon or provide input to the scoping process for the environmental statement should provide such comments to the Superintendent, Yosemite National Park, Post Office Box 577, Yosemite National Park, California 95389, by March 31, 1989. For further information contact the Superintendent, Yosemite National Park, at the above address or at telephone number (209) 372-0200.

The responsible official is Stanley Albright, Regional Director, Western Regional Office. The draft environmental statement is expected to be completed and available for public review by September, 1989, and the final Environmental Impact Statement and Record of Decision anticipated by Spring, 1990.

February 15, 1989.

**Stanley T. Albright,**

*Regional Director, Western Region.*

[FR Doc. 89-4456 Filed 2-24-89; 8:45 am]

BILLING CODE 4310-70-M

### National Capital Memorial Commission; Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the National Capital Memorial Commission will be held on Thursday, March 9, 1989, at 1:30 p.m., in the Executive Conference Room at the National Capital Planning Commission, 1325 G Street NW., Washington, DC.

The Commission was established by Public Law 99-652, for the purpose of advising the Secretary of the Interior or the Administrator of the General Services Administration, depending on which agency has jurisdiction over the lands involved in the matter, on policy and procedures for establishment of (and proposals to establish) commemorative works in the District of Columbia or its environs, as well as such other matters concerning commemorative works in the Nation's Capital as it may deem appropriate. The Commission evaluates each memorial proposal and makes recommendations to the Secretary or the Administrator with respect to appropriateness, site location and design, and serves as an information focal point for those seeking to erect memorials on Federal land in Washington, DC, or its environs.

The members of the Commission are as follows:

William Penn Mott, Jr. Chairman, Director, National Park Service, Washington, DC.

George M. White, Architect of the Capitol, Washington, DC.

Honorable Andrew J. Goodpaster, Chairman, American Battle Monuments Commission, Washington, DC.

J. Carter Brown, Chairman Commission of Fine Arts, Washington, DC.

Glen Urquhart, Chairman, National Capital Planning Commission, Washington, DC.

Honorable Marion S. Barry, Jr., Mayor of the District of Columbia, Washington, DC.

John Alderson, Administrator, General Services Administration, Washington, DC.

Honorable Frank Carlucci, Secretary of Defense, Washington, DC.

The purpose of the meeting will be to review and take action on the following:

I. Request for Area I approval for the Memorial to honor Women who served in the Armed Forces of the United States in the Republic of Vietnam during the Vietnam era, authorized by Pub. L. 100-660, which became effective on November 15, 1988.

II. Review of the preliminary design proposal for the National Law Enforcement Heros Memorial, authorized by Pub. L. 98-534 which became effective October 19, 1984.

III. Consideration of policies relating to the recognition of private contributions to memorials, museums, and other cultural facilities on public lands in the National Capital, as originally proposed by the National Capital Planning Commission.

IV. Discussion of a policy concerning whether or not identification and/or marking of a proposed memorial site should be allowed before total funding required to erect it has been certified as being available by the Secretary of the Interior.

V. Review of new memorial proposals introduced into the Congress.

**Ronald N. Wrye,**

*Acting Regional Director, National Capital Region.*

Date: February 17, 1989.

[FR Doc. 89-4458 Filed 2-24-89; 8:45 am]

BILLING CODE 4310-70-M

### Name Change, Salinas National Monument, Torrance and Socorro Counties, NM

Section 101 of Pub. L. 100-559, dated October 28, 1988, authorized the name change of Salinas National Monument, located in Torrance and Socorro Counties, New Mexico.

Notice is hereby given that the name change to Salinas Pueblo Missions National Monument has been made.

Date: February 13, 1989.

John E. Cook,

*Regional Director, Southwest Region.*

[FR Doc. 89-4455 Filed 2-24-89; 8:45 am]

BILLING CODE 4310-70-M

## INTERSTATE COMMERCE COMMISSION

**[Finance Docket No. 31389]**

### Buffalo Ridge Railroad, Inc.; Acquisition and Operation Exemption of Certain Abandoned Lines of Chicago and North Western Transportation Co.

Buffalo Ridge Railroad, Inc. (Buffalo) [1] has filed a notice of exemption to acquire and/or operate approximately 65.1 miles of rail line located in Minnesota and South Dakota. The line, which extends from milepost 0.0 at Agate, MN, to milepost 65.1 at Ellis, SD, was previously abandoned by the Chicago and North Western Transportation Company (CNW) in Docket No. AB-1 (Sub-No. 202), *Chicago and North Western Transportation Company—Abandonment in Nobles and Rock Counties, MN, and Minnehaha County, SD* (not printed), served June 16, 1988. It is to be acquired and/or operated in three separate segments as a result of the following transactions:

(1) The 41.4-mile segment, from Agate to Manley, MN (milepost 0.0 to milepost 41.1) will be acquired by the Buffalo Ridge Regional Rail Authority (Authority), a public agency and assignee of the Independent Shippers Association, Incorporated. The Authority will execute a conditional sales agreement with Buffalo to operate and eventually acquire the line.

(2) The 7.6-mile segment, from Manley, MN, to Brandon, SD (milepost 41.4 to milepost, 49.0) will be acquired by Buffalo directly from CNW to be operated by Buffalo.

(3) The 16.1-mile segment, from Brandon to Ellis, SD (milepost 49.0 to 65.1), will be acquired by Ellis & Eastern Company (Ellis), a subsidiary of Sweetman Construction Company. Buffalo intends to operate over a portion of this segment, between Brandon and Sioux Falls, SD (milepost 49.0 to milepost 58.4) (with possible service from Sioux Falls to Ellis, SD at a later date) pursuant to a trackage rights agreement that it hopes to negotiate with Ellis.[2]

As part of the transaction, CNW will also grant Buffalo incidental trackage rights, to facilitate interchange, on its line between Agate (CNW milepost 181.1) and Worthington, MN (CNW milepost 177.7), a distance of approximately 3.4 miles. These transactions were to be consummated on January 31, 1989.

In a letter filed January 30, 1989, Ellis requests that the Commission either enter an order limiting the scope of Buffalo's notice of exemption to exclude the Brandon to Ellis segment of the line or reject the notice as incorrect (with leave to file an amended and corrected notice), because it has not entered into a trackage rights agreement with Buffalo. Ellis is concerned that the exemption may impair or limit its rights with regard to this segment. By separate decision, that request has been denied.

A transaction relating to the continuance in control of Buffalo by MNVA Railroad, Inc. is the subject of a notice of exemption filed concurrently in Finance Docket No. 31389 (Sub-No. 1), *MNVA Railroad, Inc.—Continuance in Control Exemption—Buffalo Ridge Railroad, Inc.*

Any comments must be filed with the Commission and served on: (1) John D. Heffner, Gerst, Heffner, Foldes & Podgorsky, Suite 1107, 1700 K Street, NW., Washington, DC 20006; and (2) Christopher A. Mills, One North Western Center, Chicago, IL 60606.

Buffalo must preserve intact all sites and structures more than 50 years old until compliance with the requirements of section 106 of the National Historic Preservation Act, 16 U.S.C. 470, is achieved. *See Class Exemption—Acq. & Oper. of R. Lines under 49 U.S.C. 10901,* 4 I.C.C.2d 305 (1988). In Docket No. AB-1 (Sub-No. 202), *supra,* CNW was required to complete the Section 106 compliance process, noted above, with regard to the Worthington and Sioux Falls freight depot at Luverne, MN. It appears that CNW will retain control of this depot pursuant to a lease arrangement. CNW continues to have the obligation to complete the Section 106 compliance process as to this depot.

This notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: February 22, 1989.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

*Secretary.*

[FR Doc. 89-4432 Filed 2-24-89; 8:45 am]

BILLING CODE 7035-01-M

**[Docket No. AB-55 (Sub-No. 280X)]**

### CSX Transportation, Inc.; Abandonment Exemption of Railroad Lines in Drakesboro, Muhlenberg County, KY

Applicant has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon its 1.3-mile line of railroad between milepost 172.03 and milepost 173.33 located in Drakesboro, Muhlenberg County, KY.

Applicant has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; and (3) no formal complaint filed by a user of rail service on the line (or a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on March 29, 1989 (unless stayed pending reconsideration). Petitions to stay that do not involve environmental issues,[1]

[1] Buffalo is a non-carrier subsidiary of MNVA Railroad, Inc. (formerly Minnesota Valley Transportation Company, Inc., Southwest), created for the purpose of these transactions. Buffalo certifies that it will become a Class III carrier upon consummation.

[2] Buffalo initially represented in its verified notice of exemption that it had already reached an agreement with Ellis concerning the trackage rights. This statement was corrected in a letter dated February 7, 1989, in which Buffalo acknowledges that no agreement has been reached between the parties, rather they are still negotiating.

[1] A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See Exemption of Out-of-Service Rail Lines,* 4 I.C.C. 2d 400 (1988). Any entity seeking a stay involving environmental concerns is

Continued

formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking statements under 49 CFR 1152.29 must be filed by March 9, 1989.[3] Petitions for reconsideration and requests for public use conditions under 49 CFR 1152.28 must be filed by March 29, 1989 with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Charles M. Rosenberger, CSX Transportation, Inc., 500 Water Street, Jacksonville, FL 32202.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio.*

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will issue the EA by March 3, 1989. Interested persons may obtain a copy of the EA from SEE by writing to it (Room 3115, Interstate Commerce Commission, Washington, DC 20423) or by calling Carl Bausch, Chief, SEE at (202) 275-7316. Comments on environmental and energy concerns must be filed within 15 days after the EA becomes available to the public.

Environmental, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: February 21, 1989.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

**Noreta R. McGee,**

*Secretary.*

[FR Doc. 89-4430 Filed 2-24-89; 8:45 am]

BILLING CODE 7035-01-M

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**[Docket No. AB-55 (Sub-No. 290X)]**

## CSX Transportation, Inc.; Abandonment Exemption of Railroad Lines in Cuyahoga County, OH

Applicant has filed a notice of exemption under 49 CFR Part 1152 Subpart F—*Exempt Abandonments* to abandon its 0.108-mile line of railroad between Valuation Stations 52+00 and 57+75 in Cleveland, Cuyahoga County, OH.

Applicant has certified that: (1) No local traffic has moved over this stubend line for at least 2 years; and (2) no formal complaint filed by a user of rail service on the line (or a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on March 29, 1989 (unless stayed pending reconsideration). Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking statements under 49 CFR 1152.29 must be filed by March 9, 1989.[3] Petitions for reconsideration and requests for public use conditions under 40 CFR 1152.28 must be filed by March 20, 1989 with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Patricia Vail, CSX Transportation, Inc., 500 Water Street, Jacksonville, FL 32202.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio.*

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will issue the EA by March 3, 1989. Interested persons may obtain a copy of the EA from SEE by writing to it (Room 3115, Interstate Commerce Commission, Washington, DC 20423) or by calling Carl Bausch, Chief, SEE at (202) 275-7316. Comments on environmental and energy concerns must be filed within 15 days after the EA becomes available to the public.

Environmental, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: February 21, 1989.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

**Noreta R. McGee,**

*Secretary.*

[FR Doc. 89-4431 Filed 2-24-88; 8:45 am]

BILLING CODE 7035-01-M

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**[Finance Docket No. 31389 (Sub-No. 1)]**

## MNVA Railroad, Inc.; Continuance in Control Exemption of Buffalo Ridge Railroad, Inc.

MNVA Railroad, Inc. (MNVA) has filed a notice of exemption under 49 CFR 1180.4(g) regarding its continuance in control of Buffalo Ridge Railroad, Inc. (Buffalo), upon the commencement of rail operations by Buffalo. Buffalo, a wholly owned noncarrier subsidiary of MNVA, has filed concurrently a notice of exemption in Finance Docket No. 31389, *Buffalo Ridge Railroad, Inc.—Acquisition and Operation Exemption—Certain Abandoned Lines of Chicago and North Western Transportation Company.* There, Buffalo seeks an exemption to acquire and/or operate approximately 65.1 miles of rail line located in Minnesota and South Dakota that was previously abandoned by the Chicago and North Western Transportation Company.

MNVA indicates that: (1) The railroads (MNVA and Buffalo) will not connect with each other or any railroad in their corporate family; (2) the continuance in control is not part of a series of anticipated transactions that would connect the railroads with each other or any railroad in their corporate family; and (3) the transaction does not

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encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[2] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.,* 4 I.C.C. 2d 164 (1987), and final rules published in the **Federal Register** on December 22, 1987 (52 FR 48440-48446).

[3] The Commission will accept a late-filed trail use statement so long as it retains jurisdiction to do so.

[1] A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See Exemption of Out-of-Service Rail Lines,* 4 I.C.C. 2d 400 (1988). Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[2] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.,* 4 I.C.C. 2d 164 (1987), and final rules published in the **Federal Register** on December 22, 1987 (52 FR 48440-48446).

[3] The Commission will accept a late-filed trail use statement so long as it retains jurisdiction to do so.

involve a Class I carrier. Therefore, this transaction involves the continuance in control of a nonconnecting carrier, and is exempt from the prior review requirements of 49 U.S.C. 11343. *See* 49 CFR 1180.2(d)(2).

As a condition to the use of this exemption, any employees affected by the transaction will be protected by the conditions set forth in *New York Dock Ry.—Control—Brooklyn Eastern Dist.*, 360 I.C.C. 60 (1979).

Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction. Any comments must be filed with the Commission and served on: (1) John D. Heffner, Gerst, Heffner, Foldes & Podgorsky, Suite 1107, 1700 K Street, NW., Washington, DC 20006; and (2) Christopher A. Mills, One North Western Center, Chicago, IL 60606.

Decided: February 22, 1989.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

**Noreta R. McGee,**

*Secretary.*

[FR Doc. 89-4433 Filed 2-24-89; 8:45 am]

BILLING CODE 7035-01-M

## DEPARTMENT OF JUSTICE

### Lodging of Consent Decree Pursuant to the Clean Water Act; Town of Swampscott, MA

In accordance with Departmental policy, 28 CFR § 50.7, notice is hereby given that a proposed Consent Decree in *United States v. Town of Swampscott, Massachusetts* was lodged with the United States District Court for the District of Massachusetts on February 23, 1989. The consent decree addresses alleged violations by the Town of Swampscott, MA of the Clean Water Act in regard to its sewage system.

The proposed Consent Decree requires the Town of Swampscott, MA, in accordance with schedules set forth in the decree, to construct (a) secondary treatment facilities by October 1, 1993 or (b) facilities to tie its discharges into the sewerage system operated by the Lynn Water and Sewer Commission by May 1, 1992. The proposed decree also provides for determination and implementation of any necessary combined sewer overflow abatement projects and for upgrading and remediation of the Town's sludge disposal facilities. In addition, the Consent Decree requires the payment of a civil penalty of $27,000.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States v. Town of Swampscott, Massachusetts*, D.J. Ref. 90-5-1-1-3021.

The proposed Consent Decree may be examined at the office of the United States Attorney, District of Massachusetts, 1107 John W. McCormack, Post Office and Courthouse, Boston, Massachusetts 02109, and at the Office of Regional Counsel, United States Environmental Protection Agency, Region I, John F. Kennedy Federal Building, Rm. 2203, Boston, Massachusetts 02203. Copies of the Consent Decree may also be examined at the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice, Room 1517, Ninth Street and Pennsylvania Ave., NW., Washington, DC 20530. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice. In requesting a copy, please refer to the referenced case name and D.J. Ref. number and enclose a check in the amount of $3.60 (ten cents per page reproduction cost) payable to the Treasurer of the United States.

**Donald A. Carr,**

*Acting Assistant Attorney General, Land and Natural Resources Division.*

[FR Doc. 89-4489 Filed 2-23-89; 9:43 am]

BILLING CODE 4410-01-M

## DEPARTMENT OF LABOR

### Mine Safety and Health Administration

**[Docket No. M-88-248-C]**

### Pontiki Coal Corp.; Petition for Modification of Application of Mandatory Safety Standard

Pontiki Coal Corporation, Caller No. 801, Lovely, Kentucky 41231 has filed a petition to modify the application of 30 CFR 75.303 (preshift examination) to its No. 1 Mine (I.D. No. 15-08413) located in Martin County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that within 3 hours immediately preceding the beginning of any shift, and before any miner in such shift enters the active workings of a coal mine, that certified persons examine belts.

2. As an alternate method, petitioner proposes to perform only one preshift belt examination every twenty-four hours.

3. In support of this request, petitioner states that—

a) Once the conveyor belts are started in the morning they are not turned off until the end of the second shift;

b) An early warning fire detection system has been installed along each belt conveyor to monitor carbon monoxide (CO) and methane. The low-level CO sensors have been installed at each belt drive, each tailpiece and at 2,000 foot intervals along the belt conveyors; and

c) No employees are stationed at the belt drives, however, if employees are required to work at the belt drives a preshift examination would be performed in these areas.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

### Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before March 29, 1989. Copies of the petition are available for inspection at that address.

**Patricia W. Silvey,**

*Director, Office of Standards, Regulations and Variances.*

Date: February 16, 1989.

[FR Doc. 89-4423 Filed 2-24-89; 8:45 am]

BILLING CODE 4510-43-M

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

**[Notice No. 89-11]**

### NASA Advisory Council (NAC), Space Science and Applications Advisory Committee (SSAAC), Solar System Exploration Subcommittee; Meeting

**AGENCY:** National Aeronautics and Space Administration.

**ACTION:** Notice of meeting.

**SUMMARY:** In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Space Science and Applications Advisory Committee,

Solar System Exploration Subcommittee.

**DATE AND TIME:** Monday, March 6, 1989, 8:30 a.m. to 5:15 p.m., Tuesday, March 7, 1989, 8:30 a.m. to 5 p.m., Wednesday, March 8, 1989, 8:30 a.m. to 5:30 p.m., Thursday, March 9, 1989, 8:30 a.m. to 5 p.m., Friday, March 10, 1989, 8 a.m. to 12:00 noon.

**ADDRESS:** Embassy Suites Hotel, Room Embassy A, 4550 La Jolla Village Drive, San Diego, CA 92122.

**FOR FURTHER INFORMATION CONTACT:** Dr. Geoffrey A. Briggs, Code EL, National Aeronautics and Space Administration, Washington, DC 20546 (202/453-1588).

**SUPPLEMENTARY INFORMATION:** The Space Science and Applications Advisory Committee consults with and advises the NASA Office of Space Science and Applications (OSSA) on long-range plans for, and work in progress on, and accomplishments of NASA's Space Science and Applications programs. The Solar System Exploration Subcommittee provides advice to the Solar System Exploration Subcommittee provides advice to the Solar System Exploration Division concerning long-range planning in solar system exploration. The Subcommittee will meet to discuss the strategic planning issues in the areas of program base resources, international cooperation, planetary systems objectives, and planetary mission capabilities. The Subcommittee is chaired by Dr. Laurence Soderblom and is composed of 22 members. The meeting will be open to the public up to the seating capacity of the room (approximately 40 people including members of the Subcommittee). It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants.

*Type of Meeting:* Open.

*Agenda:*

Monday, March 6
- 8:30 a.m.—Opening Remarks and Welcome.
- 8:45 a.m.—Solar System Exploration Program Status.
- 9:15 a.m.—Workshop Approach and Guidelines.
- 10:15 a.m.—Space Science Board (SSB) Exploration Goals and Objectives.
- 10:45 a.m.—Mercury and Venus Exploration Objectives.
- 1:15 p.m.—Moon, Mars, Asteroids, Comets, and Jovian Objectives.
- 5:15 p.m.—Adjourn.

Tuesday, March 7
- 8:30 a.m.—Saturn, Outer Planets, and Other Planetary Systems Objectives.
- 10:45 a.m.—Subcommittee Strategic Goals and Objectives.
- 11:15 a.m.—Extended Core Program and Mars Centerpiece Program.
- 12:30 p.m.—Mission Capability Presentations.
- 5 p.m.—Adjourn.

Wednesday, March 8
- 8:30 a.m.—Base Plan Development.
- 4 p.m.—Presentation of Base Plan.
- 5 p.m.—Goals and Objectives Response.
- 5:30 p.m.—Adjourn.

Thursday, March 9
- 8:30 a.m.—Subgroup Planning: International Cooperation and Advance Technology Impacts.
- 5 p.m.—Adjourn.

Friday, March 10
- 8 a.m.—Subgroup Reports: Extended Core Program Base and International Cooperation and Advance Technology.
- 9:30 a.m.—Subgroup Reports: Mars Centerpiece Program Base and International Cooperation and Advance Technology.
- 11 a.m.—Goals and Objectives: Plans for Synthesis of Subgroup Plans.
- 12:00 noon—Adjourn.

February 21, 1989.

**Ann Bradley,**

*Advisory Committee Management Officer, National Aeronautics and Space Administration.*

[FR Doc. 89-4435 Filed 2-24-89; 8:45 am]

BILLING CODE 7510-01-M

**[Notice 89-12]**

## Availability of Tracking and Data Relay Satellite C-Band Capacity

**AGENCY:** National Aeronautics and Space Administration (NASA).

**ACTION:** Notice of availability of Tracking and Data Relay Satellite CA-Band Capacity.

**SUMMARY:** This notice announces the availability of Tracking and Data Relay Satellite (hereafter TDRS) C-band capacity for international telecommunications purposes.

The capacity available (after launch and checkout of TDRS-D) consists of twelve 36 MHz C-band transponders on each of two TDRS satellites, located at 41 °W and 171 °W. NASA prefers that a user purchase the capacity from all transponders on both satellites, i.e., 24 transponders, for a minimum of 3 years. Reduced utilization of the system may be secondarily considered. Since the TDRS NASA program operations will have priority over satellite use in system operations, there is some possibility that the identified satellites may have to be replaced, moved and/or reconfigured, with a resulting impact on C-band users. Such impacts will be discussed with the potential users. NASA will provide TDRS spacecraft EW and NS position control to within 0.1 ° as well as operational control, that is, tracking, telemetry and command, including the C-band transponders, but will not provide the C-band performance monitoring required by the Federal Communications Commission (FCC); this will be the responsibility of the C-band user. In addition, detailed characterization of the transponders will be the responsibility of the user.

Any user must obtain FCC and other approvals required by law, regulation or international agreement prior to using the C-band capacity.

Intelsat and Pan American Satellite have initiated separate dialogues with NASA regarding purchase of C-band capacity from NASA and these organizations and NASA have had preliminary discussions on some of the technical concerns and terms and conditions of use.

The price for C-band capacity will be established competitively.

Current NASA regulations that provide for the availability of TDRS services to non-U.S. Government users (see 14 CFR Part 1215, Subpart 1215.1) do not apply to C-band capacity.

**DATE:** Expressions of interest in the availability of C-band capacity as described above should be received in writing within 14 days of the date of publication in the **Federal Register.**

**ADDRESS:** National Aeronautics and Space Administration, Code TX, Washington, DC 20546.

**FOR FURTHER INFORMATION CONTACT:** Mr. D. Harris, Code TX, NASA Headquarters, Washington, DC 20546.

Date: February 21, 1989.

**Robert O. Aller,**

*Associate Administrator for Space Operations.*

[FR Doc. 89-4434 Filed 2-24-89; 8:45 am]

BILLING CODE 7510-01-M

## NUCLEAR REGULATORY COMMISSION

## Nominations for New Members of the Advisory Committee on the Medical Uses of Isotopes

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Call for nominations.

**SUMMARY:** The Nuclear Regulatory Commission (NRC) is rotating membership on its Advisory Committee on the Medical Uses of Isotopes (ACMUI) and is inviting nominations of members of the medical community having expert qualifications in their medical specialty fields and responsibilities for health care delivery.

**DATES:** Nominations due by March 31, 1989.

**ADDRESS:** Submit nominations to: Secretary of the Commission, ATTN: Advisory Committee Management Officer, Nuclear Regulatory Commission, Washington, DC 20555.

**FOR FURTHER INFORMATION CONTACT:** Norman L. McElroy, Medical, Academic, and Commercial Use Safety Branch 6-H-3, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 492-3417.

**SUPPLEMENTARY INFORMATION:** The ACMUI advises the NRC staff on policy and technical issues that arise in regulating the medical use of byproduct material for diagnosis and therapy. Responsibilities include providing guidance and comments on changes in NRC rules, regulations, and guides concerning medical use; evaluating certain non-routine uses of byproduct material for medical use; and providing technical assistance in licensing inspection, and enforcement cases.

The ACMUI now consists of two physician specialists in therapeutic radiology; five physician specialists in nuclear medicine with backgrounds in pathology, radiology, internal medicine, oncology, and nuclear cardiology; and a specialist in medical physics. The Committee membership constitutes medical and technical specialty skills needed to address current issues. The issues and needed skills change from time to time. Because the NRC is now examining issues such as quality assurance and training and experience criteria, it is appropriate to expand the ACMUI's experience base. Thus, the NRC will consider nominations of hospital administrators, nuclear medicine and radiation therapy technologists, as well as physicians who are expert in the medical use of radiation.

A chairman will be designated by the Director, Office of Nuclear Material Safety and Safeguards.

Committee members will serve a six-year term and will normally be eligible for one re-appointment, depending on programmatic needs.

Nominations must include a resume describing the educational and professional qualifications of the nominee, and provide the nominee's current address and telephone number.

Nominee must be U.S. citizens and be able to devote approximately 80 hours per year to committee business. Members will be compensated and reimbursed for travel (including per diem in lieu of subsistence), secretarial, and correspondence expenses.

Dated at Washington, DC, this 22nd day of February 1989.

For the Nuclear Regulatory Commission.

**John C. Hoyle,**

*Advisory Committee Management Officer.*

[FR Doc. 89-4466 Filed 2-24-89; 8:45 am]

BILLING CODE 7590-01-M

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**[Docket No. 50-298]**

## Nebraska Public Power District; Cooper Nuclear Station; Correction to Notice of Withdrawal of Applications for Amendments to Facility Operating License

On February 2, 1989, the **Federal Register** published the Notice of Withdrawal of Applications for Amendments to Facility Operating License for the Cooper Nuclear Station. On page 5292 the heading incorrectly reference Gulf States Utilities and Docket No. 50-458. The Notice should have referenced Nebraska Public Power District, Docket No. 50-298 as the appropriate utility and docket number.

Dated at Rockville, Maryland, this 15th day of February 1989.

For the Nuclear Regulatory Commission.

**Paul W. O'Connor,**

*Project Manager, Project Directorate—IV, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.*

[FR Doc. 89-4462 Filed 2-24-89; 8:45 am]

BILLING CODE 7590-01-M

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**[Docket Nos. 50-361/362]**

## Southern California Edison Co. et al.; Denial of Amendments to Facility Operating Licenses and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) has denied a request by Southern California Edison Company, San Diego Gas and Electric Company, The City of Riverside, California and the City of Anaheim, California (licensees) for amendments to Facility Operating License Nos. NPF-10 and NPF-15, issued to the licensees, for operation of the San Onofre Nuclear Generating Station (SONGS), Units 2 and 3, located in San Diego County, California. The Notice of Consideration of Issuance of Amendments was published in the **Federal Register** on March 9, 1988 (53 FR 7602).

The amendments, as proposed by the licensees, would revise Technical Specification (TS) 3/4.7.1.5, "Main Steam Line Isolation Valves (MSIVs)," to include operability requirements for the main feedwater isolation valves (MFIVs), the main feedwater backup isolation valves (MFBIVs), and the steam generator sample isolation valves (SGSIVs) and blowdown isolation valves (BIVs). They would also revise TS 3/4.7.1.2, "Auxiliary Feedwater System," to incorporate operability requirements for the auxiliary feedwater isolation valves (AFWIVs), the auxiliary feedwater control valves (AFWCVs), and the auxiliary feedwater bypass control valves (AFWBCVs).

The staff finds that the proposed 72-hour action statement for the MFIVs is not acceptable because the MFIV and the MFBIV in each feedwater line provide the same degree of protection against a steam line break as do the two MSIVs in the main steam lines. That is, either the MFIV or the MFBIV in the feedwater line to the broken steam generator must close to ensure that no more than one steam generator will blow down, just as either MSIV must close to ensure that no more than one steam generator will blow down. Therefore, the action statements for the MFIVs and the MFBIVs should be identical to that for the MSIVs (4 hours) since each provides the same degree of protection against the same accident. For this reason, the proposed changes have been denied.

By March 29, 1989, the licensees may demand a hearing with respect to the denial described above and any person whose interest may be affected by this proceeding may file a written petition for leave to intervene.

A request for a hearing or petition for leave to intervene must be filed with the Secretary for the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 2120 L Street NW., Washington, DC, by the above date.

A copy of any petitions should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Charles R. Kocher, Esq., Southern California Edison Company, 2244 Walnut Grove Avenue, P.O. Box 800, Rosemead, California 91770, and Orrick, Herrington & Sutcliff, Attn: David R. Pigott, Esq., 600 Montgomery Street, San Francisco, California 94111.

For further details with respect to this action, see (1) the application for amendments dated December 14, 1987, and (2) the Commission's letter to the licensees dated February 16, 1989, which are available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC, and at the General Library, University of California at Irvine, Irvine, California 92713. A copy of Item (2) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects—III, IV, V and Special Projects.

Dated at Rockville, Maryland, this 16th day of February 1989.

**Donald E. Hickman,**

*Project Manager, Project Directorate V, Division of Reactor Projects—III, IV, V and Special Projects.*

[FR Doc. 89-4463 Filed 2-24-89; 8:45 am]

BILLING CODE 7590-01-M

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**[Docket Nos. 50-361 And 50-362]**

## Southern California Edison Co. et al.; Consideration of Issuance of Amendments to Facility Operating Licenses and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. NPF-10 and NPF-15 issued to Southern California Edison Company (SCE), San Diego Gas and Electric Company, the City of Riverside, California and the City of Anaheim, California (the licensees), for operation of San Onofre Nuclear Generating Station, Units 2 and 3 located in San Diego County, California. The request for amendments was submitted by letter dated May 19, 1988 and identified as Proposed Change PCN-246.

The proposed change would revise Technical Specification (TS) 3/4.7.6, "Snubbers." TS 3/4.7.6 requires the operability of all snubbers installed on safety related systems or on nonsafety related systems where failure of a snubber or the system could adversely impact a safety related system. TS 3/4./7.6 defines periodic surveillance tests and inspections to verify operability, and actions when a snubber is found to be inoperable. Specifically, TS 4.7.6.b, 4.7.6.d, and 4.7.6.i require periodic visual inspections, functional tests and service life monitoring of all snubbers.

TS 4.7.6.b requires a visual inspection of snubbers at a maximum interval of 18 months ±25%. The interval for the subsequent visual inspection is decreased, depending on the number of inoperable snubbers detected in the visual inspection, from 12 months ±25% if one snubber is inoperable to a minimum of 31 days ±25% if one snubber is inoperable to a minimum of 31 days ±25% if eight or more snubbers are inoperable.

TS 4.7.6.d requires that a representative sample of at least 10% of each type of snubber be functionally tested, either in place or in a bench test, at least once every 18 months, during shutdown. At least 25% of the sample shall include snubbers categorized as the first snubber away from a reactor vessel nozzle, within five feet of heavy equipment, or within ten feet of a safety relief valve discharge. Should failures be discovered, functional testing of an additional 10% is required until no failures are found or all snubbers of that type have been functionally tested.

TS 4.7.6.i requires that the installation and maintenance records for each snubber be reviewed at least once per 18 months to determine that the service life has not been, and will not be, exceeded until at least the next scheduled snubber service life review.

The proposed amendment would make the following changes to the current requirements:

(1) Increase the visual inspection interval from 18 months ±25% to 20 months ±25% and the subsequent inspection interval for one failure from 12 months ±25% to 14 months ±25%.

(2) Increase the functional test interval from 18 months to each refueling and increase the functional test sample size from 10% to 15%. For consistency, Bases section 3/4.7.6 would be revised to indicate that functional testing of a representative sample of snubbers is required at refueling intervals.

(3) Increase the interval for snubber service life review from 18 months to refueling interval to be consistent with the functional test interval.

Before issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By March 29, 1989 the licensees may file a request for a hearing with respect to issuance of the amendments to the subject facility operating licenses, and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for hearing and petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board Panel designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel will rule on the request and/or petition, and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first pre-hearing conference schedule in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first pre-hearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendments under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene shall be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner or representative for the petitioner promptly inform the Commission by a toll-free telephone call to Western Union at 1-(800) 325-6000 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to George W. Knighton: Petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Mr. Charles R. Kocher, Esq., Southern California Edison Company, 2244 Walnut Grove Avenue, P.O. Box 800, Rosemead, California 91770 and Orrick, Herrington and Sutcliffe, Attention: David R. Pigott, Esq., 600 Montgomery Street, San Francisco, California 94111, attorneys for the licensees.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of the factors specified in the 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

If a request for hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendments which is available for public inspection at the Commission's public Document Room, 2120 L Street NW., Washington, DC, and at the General Library, University of California at Irvine, Irvine, California 92713.

Dated at Rockville, Maryland, this 17th day of February, 1989.

For the Nuclear Regulatory Commission.

**George W. Knighton,**

*Director Project Directorate V, Division of Reactor Projects—III, IV, V, and Special Projects.*

[FR Doc. 89-4464 Filed 2-24-89; 8:45 am]

BILLING CODE 7590-01-M

## PRESIDENT'S COMMISSION ON FEDERAL ETHICS LAW REFORM

### Meeting

**ACTION:** Notice of Meeting of President's Commission on Federal Ethics Law Reform.

**SUMMARY:** This notice announces a meeting of the President's Commission on Federal Ethics Law Reform. The purpose of this meeting is to continue work on the Commission's assigned task, which is the provision of recommendations to the President regarding any necessary changes and/or improvements in the government-wide ethics program. Also included is an explanation of why 15 days notice of the date of this meeting was not provided to the public. Notice is required by the Federal Advisory Committee Act, 5 U.S.C. App. 2, and its implementing regulation, 41 CFR 101.6.

**DATE:** March 1, 1989, 9 a.m.

**ADDRESS:** U.S. Department of Justice, 10th Street and Constitution Avenue, NW., Conference Room B, Washington, DC 20530.

**FOR FURTHER INFORMATION CONTACT:** Amy L. Schwartz, Executive Director of the Commission, at 202-456-7953 or 202-633-3522.

**SUPPLEMENTARY INFORMATION:** It was not possible to provide 15 days notice of this meeting due to the fact that the Commission decided, after its meeting of February 22, that one additional meeting was necessary before its report is provided to the President on March 9, 1989. The purpose of this meeting is to go over the final draft of the report and consider additional issues not reached in the first three meetings.

At this time, the Commission believes that, in view of the short time frame available to it before its recommendations are due to the President, it does not have time to accept oral testimony. The Commission welcomes written comments, however, which should be submitted to: President's Commission on Federal Ethics Law Reform, U.S. Department of Justice, Room 6237, Tenth and Constitution Avenue NW., Washington, DC 20530.

It would be extremely helpful if comments included an initial executive summary.

Persons who wish to attend the Commission's meetings should contact Jean Schmidlin at 202-633-4667 prior to the meeting in order that building access may be facilitated. Visitors should use the entrance at the center of the Constitution Avenue side of the building, midway between Ninth and Tenth Streets.

Dated: February 23, 1989.

**Malcolm R. Wilkey,**

*Chairman.*

[FR Doc. 89-4595 Filed 2-24-89; 8:45 am]

BILLING CODE 4410-01-M

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34-26557; File Nos. SR-SCCP-88-02 and SR-PHILADEP-88-02]**

### Self-Regulatory Organizations; Order Granting Approval of Proposed Rule Changes By The Stock Clearing Corporation of Philadelphia and the Philadelphia Depository Trust Company Relating to By-Law Changes Regarding the Location of Board of Directors Meetings.

On December 29, 1988, The Stock Clearing Corporation of Philadelphia ("SCCP") and The Philadelphia Depository Trust Company ("PHILADEP") filed proposed rule changes (File Nos. SR-SCCP-88-02 and SR-PHILADEP-88-02), described below, with the Commission pursuant to section 19(b)(1) of the Securities Exchange Act of 1934.[1] On January 17, 1989, the Commission published notice of both proposed rule changes in the **Federal Register** to solicit comments from interested persons.[2] No comments were received. This Order approves both proposals.

The proposals would amend SCCP By-Law Article IV, section 4 and Philadep By-Law Article IV, section 4, to allow Board of Directors meetings outside the Commonwealth of Pennsylvania. SCCP and PHILADEP state in their filings that the purpose of each proposal is to allow each clearing agency's respective Board of Directors to schedule meetings at the same location as conferences of the Board of Governors of the Philadelphia Stock Exchange ("PHLX"), which from time to time convenes its Board conferences outside of the

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release Nos. 26439, 26438 (January 10, 1989), 54 FR 1833, 1843.

Commonwealth of Pennsylvania. SCCP and PHILADEP believe that the proposed rule change is consistent with the Act and will maximize the efficient use of board members' time.

The Commission believes that each proposal is consistent with section 17A of the Act and, in particular, the requirement that each clearing agency's rules generally provide for fair representation of its participants. Because some of SCCP's board members and PHILADEP's board members are also members of the PHLX's Board of Governors meetings are usually scheduled on approximately the same dates and at the same location. From time to time PHLX's Board meetings are scheduled outside the Commonwealth of Pennsylvania, reflecting Phlx's status as a *national* securities exchange. The Commission believes that holding meetings on approximately the same dates and at the same location maximizes the efficient use of Participant board members' time and promotes greater participation from participant board members. Therefore, the Commission is authorizing the adoption of this proposal to allow meetings of SCCP's and PHILADEP's Boards of Directors to be held outside the Commonwealth of Pennsylvania.

For the reasons discussed above, the Commission finds that the proposed rule change is consistent with the Act and, in particular, section 17A.

*It is therefore ordered,* Pursuant to section 19(b)(2) of the Act, that the proposed rule changes (File Nos. SR-SCCP-88-02 and SR-PHILADEP-88-02) be, and hereby are, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

**Jonathan G. Katz,**

*Secretary.*

Dated: February 17, 1989.

[FR Doc. 89-4477 Filed 2-24-89; 8:45 am]

BILLING CODE 8010-01-M

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**[Release No. IC-16823; 811-573]**

## Mutual Shares Corporation; Application for Deregistration

February 17, 1989.

**AGENCY:** Securities and Exchange Commission ("SEC").

**ACTION:** Notice of Application for Deregistration under the Investment Company Act of 1940 (the "Act").

*Applicant:* Mutual Shares Corporation ("Applicant").

*Relevant 1940 Act Sections:* Deregistration under section 8(f).

*Summary of Application:* Applicant seeks an order declaring that it has ceased to be an investment company subject to the Act.

*Filing Date:* The application was filed on Form N-8f on May 3, 1988, and an amendment was filed on February 3, 1989.

*Hearing or Notification of Hearing:* If no hearing is ordered, the application will be granted. Any interested person may request a hearing on the application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m. on March 13, 1989. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

**ADDRESSES:** Secretary, SEC, 450 5th Street, NW., Washington, DC 20549; Applicant: Mutual Shares Corporation: 51 John F. Kennedy Parkway, Short Hills, New Jersey 07078.

**FOR FURTHER INFORMATION CONTACT:** Bibb L. Strench, Staff Attorney, (202) 272-2856 or Karen L. Skidmore, Branch Chief, (202) 272-3023, Office of Investment Company Regulation.

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application; proper terms are those defined in the application. The complete application is available for a fee from either the SEC's Public Reference Branch in person, or the SEC's commercial copier (800) 231-3282 (in Maryland (301) 258-4300).

**Applicants' Representations:**

1. Applicant, organized as a New York corporation, is registered under the Act as a open-end, diversified management investment company.

2. In June, 1949, Applicant registered under the Act and filed a registration statement in June, 1941, which became effective in October, 1949. Applicant also registered 10,000 shares of common stock, par value $1.00, under the Securities Act of 1933. To Applicant's best knowledge, the initial public offering commenced on october 15, 1949. In February, 1983, Applicant registered an indefinite number of shares of common stock, par value $1.00 per share, pursuant to Rule 24f-2 of the Act.

3. At a meeting on october 28, 1987, the Board of Directors of the Applicant authorized the merger of Applicant into Mutual Series Fund, Inc. ("Mutual Series Fund") and authorized the President and other officers to take all action necessary to effectuate the merger and to deregister the Applicant under the Act. The Board of Directors determined that the cost savings associated with a combination of the three separate funds into series of one registered investment company would be of benefit to shareholders. The Board approved the form of proxy statement which was first sent to stockholders on November 30, 1987.

4. New York law required the approval of the merger by two-thirds of the Applicant's outstanding shares of stock. At the annual meeting of stockholder's held on December 30, 1987 as adjourned to January 20, 1988, notice of which was duly and properly given, 18,444,931 shares representing 67.08% of the shares entitled to vote approved the merger.

5. Mutual Series Fund was incorporated in Maryland on November 12, 1987. It had no assets or shares outstanding until the Applicant merged into it on February 19, 1988 when it commenced the public offering of its shares. Mutual Series Fund's registration statement was intitially filed with the Commission on November 13, 1987 and was declared effective by the Commission on January 29, 1988. It has registered an indefinite number of shares pursuant to Rule 24f-2. It engaged in no activities prior to the merger.

6. On February 19, 1988, the Applicant merged with Mutual Series Fund in a share for share exchange whereby each stockholder of the Applicant received a number of shares of Mutual Shares Fund Stock, one of the three series of Mutual Series Fund, equal to the number of shares of Applicant owned on the merger date. As of the date of the merger of Applicant into Mutual Series Fund, the Applicant had outstanding 28,818,250 shares of common stock, per value $1.00 per share, with a net asset value of $62.82 per share and net assets of $1,810,293,536. The 28,818,250 shares of Mutual Shares Fund stock issued by Mutual Series Fund in exchange for the Applicant's shares were issued at net asset value per share of Applicant ($62.82). No shares of Mutual Shares Fund Stock were outstanding prior to the merger, and thus the shares received had the same net asset value and represented the same proportion of total assets as the stock exchanged. No fees or brokerage commissions were paid.

7. All securityholders have received any distributions due. All shares outstanding automatically become an equal number of shares with the same net asset value of Mutual Series Fund with no further action by shareholders

required. The transfer agent adjusted book entry accounts accordingly. There was no need to locate individual shareholders.

8. The expenses incurred in the merger were primarily filing, legal and accounting fees and printing and mailing costs associated with the organization of Mutual Series Fund. These costs were all borne by the Applicant to the extent they were solely attributable to the Applicant, and pursuant to approval by the respective boards of directors, were apportioned pro rata according to total assets with Mutual Qualified Income Fund Inc. and Mutual Beacon Fund, Inc., two other registered investment companies advised by the same investment adviser which also merged in Mutual Series Fund on the same date, to the extent such costs were not attributable solely to one of such funds. Approximate total costs to the applicant were $313,300, to Mutual Qualified Income Fund Inc. were $133,000, and to Mutual Beacon Fund, Inc. were $68,500. As of the time of filing the application, Applicant had no securityholders. No assets have been retained by Applicant and no liabilities remain outstanding. Applicant is not a party to any litigation or administrative proceedings. Heine Securities Corporation, Applicant's investment adviser, was subject to an order of the Commission, dated December 28, 1988, instituting proceedings, findings and imposing remedial sanctions. *See* Investment Company Act Release No. 16714.) Applicant is not presently engaged in, nor does it propose to engage in, any business activities other than those necessary for the winding up of its affairs.

9. Applicant is current on its required filings, including its N-SAR filing and will make all final filings required by the Act.

10. On February 19, 1988, the applicant filed a Certificate of Merger with the Secretary of State of the State of New York and the Mutual Series Fund filed Articles of Merger with the State of Maryland. Applicant was merged into Mutual Series Fund on that date. Applicant has ceased to exist under New York law.

For the Commission, by the Division of Investment Management, under delegated authority.

Shirley E. Hollis,

*Assistant Secretary.*

[FR Doc. 89-4476 Filed 2-24-89; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-16818; 811-1142]

## Mutual Beacon Fund, Inc.; Application for Deregistration

February 17, 1989.

*Agency:* Securities and Exchange Commission ("SEC").

*Action:* Notice of application for deregistration under the Investment Company Act of 1940 (the "Act").

*Applicant:* Mutual Beacon Fund, Inc. ("Applicant").

*Relevant 1940 Act Sections:* Deregistration under section 8(f).

*Summary of Application:* Applicant seeks an order declaring that it has ceased to be an investment company subject to the Act.

*Filing Date:* The application was filed on Form N-8f on May 3, 1988, and an amendment was filed on February 3, 1989.

*Hearing or Notification of Hearing:* If no hearing is ordered, the application will be granted. Any interested person may request a hearing on the application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m. on March 13, 1989. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

*Addresses:* Secretary, SEC, 450 5th Street, NW., Washington, DC 20549; *Applicant:* Mutual Beacon Fund, Inc.: 51 John F. Kennedy Parkway, Short Hills, New Jersey 07078.

*For Further Information Contact:* Bibb L. Strench, Staff Attorney, (202) 272-2856 or Karen L. Skidmore, Branch Chief, (202) 272-3023, Office of Investment Company Regulation.

*Supplementary Information:* The following is a summary of the application; proper terms are those defined in the application. The complete application is available for a fee from either the SEC's Public Reference Branch in person, or the SEC's commercial copier (800) 231-3282 (in Maryland (301) 258-4300).

### Applicants' Representations

1. Applicant, organized as a Massachusetts corporation, is registered under the Act as a open-end, diversified management investment company.

2. On March 3, 1961, Applicant registered under the Act as Beacon Growth Fund, Inc. and filed a registration statement on Form N-8B-1 in August 1961, which became effective shortly thereafter. Applicant also registered 300,000 shares of common stock, par value $1.00, under the Securities Act of 1933. To Applicant's best knowledge, the initial public offering commenced on August 27, 1961. In February 1985, Applicant registered an indefinite number of shares of common stock, par value $.01 per share, pursuant to Rule 24f-2 of the Act.

3. At a meeting on October 28, 1987, the Board of Directors of the Applicant authorized the merger of Applicant into Mutual Series Fund, Inc. ("Mutual Series Fund") and authorized the President and other officers to take all action necessary to effectuate the merger and to deregister the Applicant under the Act. The Board of Directors determined that the cost savings associated with a combination of the three separate funds into series of one registered investment company would be of benefit to shareholders. The Board approved the form of proxy statment which was first sent to stockholders on November 30, 1987.

4. Massachusetts law required the approval of the merger by two-thirds of the Applicant's outstanding shares of stock. At the annual meeting of stockholders' held on December 30, 1987 was adjourned to January 20, 1988, notice of which was duly and properly given, 4,454,184 shares representing 68.04% of the shares entitled to vote approved the merger.

5. Mutual Series Fund was incorporated in Maryland on November 12, 1987. It had no assets or shares outstanding until the Applicant merged into it on February 19, 1988 when it commenced the public offering of its shares. Mutual Series Fund's registration statement was initially filed with the Commission on November 13, 1987 and was declared effective by the Commission on January 29, 1988. It has registered an indefinite number of shares pursuant to Rule 24f-2. It engaged in no activities prior to the merger.

6. On February 19, 1988, the Applicant merged with Mutual Series Fund in a share for share exchange whereby each stockholder of the Applicant received a number of shares of Mutual Beacon Fund Stock, one of the three series of Mutual Series Fund, equal to the number of shares of Applicant owned on the merger date. As of the date of the merger of Applicant into Mutual Series Fund, the Applicant had outstanding 7,016,883 shares of common stock, par value of $0.01 per share, with a net asset of $21.08 per share and net assets of $149,848,476. The 7,016,883 shares of

Mutual Beacon Fund stock issued by Mutual Series Fund in exchange for the Applicant's shares were issued at net asset value per share of Applicant ($21.08). No shares of Mutual Beacon Fund Stock were outstanding prior to the merger, and thus the shares received had the same net asset value and represented the same proportion of total assets as the stock exchanged. No fees or brokerage commissions were paid.

7. All securityholders have received any distributions due. All shares outstanding automatically become an equal number of shares with the same net asset value of Mutual Series Fund with no further action by shareholders required. The transfer agent adjusted book entry accounts accordingly. There was no need to local individual shareholders.

8. The expenses incurred in the merger were primarily filing, legal and accounting fees and printing and mailing costs associated with the organization of Mutual Series Fund. These costs were all borne by the Applicant to the extent they were solely attributable to the Applicant, and pursuant to approval by the respective boards of directors, were apportioned pro rata according to total assets with Mutual Qualified Income Fund Inc. and Mutual Shares Corporation, two other registered investment companies advised by the same investment adviser which also merged into Mutual Series Fund on the same date, to the extent such costs were not attributable solely to one of such funds. Approximate total costs to the Applicant were $68,500, to Mutual Shares Corporation were $313,000, and to Mutual Qualified Income Fund Inc. were $133,000.

9. As of the time of filing the application, Applicant had no securityholders. No assets have been retained by Applicant and no liabilities remain outstanding. Applicant is not a party to any litigation or administrative proceedings. Heine Securities Corporation, Applicant's investment adviser, was subject to an order of the Commission, dated December 28, 1988, instituting proceedings, findings and imposing remedial sanctions. (*See* Investment Company Act Release No. 16714.) Applicant is not presently engaged in, nor does it propose to engage in, any business activities other than those necessary for the winding up of its affairs.

10. Applicant is current on its required filings, including its N-SAR filing and will make all final filings required by the Act.

11. On February 19, 1988, the Applicant filed Articles of Merger with the Secretary of State of the State of Massachusetts pursuant to Massachusetts law and the Mutual Series Fund filed Articles of Merger with the State of Maryland pursuant to the requirements of Maryland law. Applicant was merged into Mutual Series Fund on that date. Applicant has ceased to exist under Massachusetts law.

For the Commission, by the Division of Investment Management, under delegated authority.

**Shirley E. Hollis,**

*Assistant Secretary.*

[FR Doc. 89-4400 Filed 2-24-89; 8:45 am]

BILLING CODE 8010-01-M

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**[Release No. IC-16819; 811-3005]**

## Mutual Qualified Income Fund Inc.; Application for Deregistration

February 17, 1989.

*Agency:* Securities and Exchange Commission ("SEC").

*Action:* Notice of Application for Deregistration under the Investment Company Act of 1940 (the "Act").

*Applicant:* Mutual Qualified Income Fund Inc. ("Applicant").

*Relevant 1940 Act Sections:* Deregistration under section 8(f).

*Summary of Application:* Applicant seeks an order declaring that it has ceased to be an investment company subject to the Act.

*Filing Date:* The application was filed on Form N-8f on May 3, 1988, and an amendment was filed on February 3, 1989.

*Hearing or Notification of Hearing:* If no hearing is ordered, the application will be granted. Any interested person may request a hearing on the application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m. on March 13, 1989. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

*Addresses:* Secretary, SEC, 450 5th Street, NW., Washington, DC 20549; Applicant: Mutual Qualified Income Fund Inc.: 51 John F. Kennedy Parkway, Short Hills, New Jersey 07078.

*For Further Information Contact:* Bibb L. Strench, Staff Attorney, (202) 272-2856 or Karen L. Skidmore, Branch Chief, (202) 272-3023, Office of Investment Company Regulation.

*Supplementary Information:* The following is a summary of the application; proper terms are those defined in the application. The complete application is available for a fee from either the SEC's Public Reference Branch in person, or the SEC's commercial copier (800) 231-3282 (in Maryland (301) 258-4300).

### Applicant's Representations

1. Applicant, organized as a New York corporation, is registered under the Act as a open-end, diversified management investment company.

2. On March 10, 1980, Applicant registered under the Act and filed a registration statement on Form N-1 on September 3, 1980, which became effective on September 16, 1980. To Applicant's best knowledge, the initial public offering commenced on September 16, 1980. Applicant also registered an indefinite number of shares of common stock, par value $.01 per share, under the Securities Act of 1933, pursuant to Rule 24f-2 of the Act.

3. At a meeting on October 28, 1987, the Board of Directors of the Applicant authorized the merger of Applicant into Mutual Series Fund, Inc. ("Mutual Series Fund") and authorized the President and other officers to take all action necessary to effectuate the merger and to deregister the Applicant under the Act. The Board of Directors determined that the cost savings associated with a combination of the three separate funds into series of one registered investment company would be of benefit to shareholders. The Board approved the form of proxy statement which was first sent to stockholders on November 30, 1987.

4. New York law required the approval of the merger by two-thirds of the Applicant's outstanding shares of stock. At the annual meeting of stockholder's held on December 30, 1987 as adjourned to January 20, 1988, notice of which was duly and properly given, 22,320,732 shares representing 67.25% of the shares entitled to vote approved the merger.

5. Mutual Series Fund was incorporated in Maryland on November 12, 1987. It had no assets or shares outstanding until the Applicant merged into it on February 19, 1988 when it commenced the public offering of its shares. Mutual Series Fund's registration statement was initially filed with the Commission on November 13, 1987 and was declared effective by the Commission on January 29, 1988. It has registered an indefinite number of shares pursuant to Rule 24f-2. It engaged in no activities prior to the merger.

6. On February 19, 1988, the Applicant merged with Mutual Series Fund in a share for share exchange whereby each stockholder of the Applicant received a number of shares of Mutual Qualified Income Fund Stock, one of the three series of Mutual Series Fund, equal to the number of shares of Applicant owned on the merger date. As of the date of the merger of Applicant into Mutual Series Fund, the Applicant had outstanding 35,593,165 shares of common stock, par value $0.01 per share, with a net asset value of $20.96 per share and net assets of $767,014,540. The 35,593,165 shares of Mutual Qualified Fund stock issued by Mutual Series Fund in exchange for the Applicant's shares were issued at net asset value per share of Applicant ($20.96). No shares of Mutual Qualified Income Fund Stock were outstanding prior to the merger, and thus the shares received had the same net asset value and represented the same proportion of total assets as the stock exchanged. No fees or brokerage commissions were paid.

7. All securityholders have received any distribution due. All shares outstanding automatically become an equal number of shares with the same net asset value of Mutual Series Fund with no further action by shareholders required. The transfer agent adjusted book entry accounts accordingly. There was no need to locate individual shareholders.

8. The expenses incurred in the merger were primarily filing, legal and accounting fees and printing and mailing costs associated with the organization of Mutual Series Fund. These costs were all borne by the Applicant to the extent they were solely attributable to the Applicant, and pursuant to approval by the respective boards of directors, were apportioned pro rata according to total assets with Mutual Beacon Fund Inc. and Mutual Shares Corporation, two other registered companies advised by the same investment adviser which also merged into Mutual Series Fund on the same date, to the extent such costs were not attributable solely to one of such funds. Approximate total costs to the Applicant were $133,000, to Mutual Shares Corporation were $313,000, and to Mutual Beacon were $68,500.

9. As of the time of filing the application, Applicant had no securityholders. No assets have been retained by Applicant and no liabilities remain outstanding. Applicant is not a party to any litigation or administrative proceedings. Heine Securities Corporation, Applicant's investment adviser, was subject to an order of the Commission, dated December 28, 1988, instituting proceedings, findings and imposing remedial sanctions. (*See* Investment Company Act Release No. 16714.) Applicant is not presently engaged in, nor does it propose to engage in, any business activities other than those necessary for the winding up of its affairs.

10. Applicant is current on its required filings, including its N-SAR filing and will make all final filings required by the Act.

11. On February 19, 1988, the Applicant filed a Certificate of Merger with the Secretary of State of the State of New York and the Mutual Series Fund filed Articles of Merger with the State of Maryland. Applicant was merged into Mutual Series Fund on that date. Applicant has ceased to exist under New York law.

For the Commission, by the Division of Investment Management, under delegated authority.

Shirley E. Hollis,

*Assistant Secretary.*

[FR Doc. 89-4401 Filed 2-24-89; 8:45 am]

BILLING CODE 8010-01-M

## DEPARTMENT OF TRANSPORTATION

**[Order 89-234)—Docket 46135]**

### Order Instituting Portland-Vancouver Service Case

**AGENCY:** Department of Transportation.

**ACTION:** Institution of Portland-Vancouver Service Case.

**SUMMARY:** The Department has decided to institute the *Portland-Vancouver Service Case*, Docket 46135, to select a U.S. air carrier application to be transmitted to the Government of Canada with the United States' endorsement for approval to engage in foreign air transportation of persons, property and mail between Portland, Oregon, and Vancouver (Vancouver International Airport), British Columbia, Canada, using aircraft with no more than 60 seats. The case will be decided using written, non-oral evidentiary hearing procedures under Rule 1750 of the Department's regulations (14 CFR 302.1750). The Department is inviting interested air carriers to file applications for authority to serve the market at issue.

**DATE:** Applications for Portland-Vancouver authority, motions to consolidate, petitions for leave to intervene, and petitions for reconsideration of Order 89-2-34 should be filed by March 6, 1989.

**ADDRESS:** Applications, motions to consolidate, petitions for leave to intervene, and petitions for reconsideration should be filed in Docket 46135, addressed to the Documentary Services Division, U.S. Department of Transportation, 400 Seventh Street, SW., Room 4107, Washington, DC 20590, and should be served on all parties in Docket 46135.

Dated: February 22, 1989.

Patrick V. Murphy, Jr.,

*Deputy Assistant Secretary for Policy and International Affairs.*

[FR Doc. 89-4474 Filed 2-24-89; 8:45 am]

BILLING CODE 4910-62-M

## Federal Aviation Administration

### Proposed Advisory Circular 120-XX, Cockpit Resource Management Training

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of availability of proposed Advisory Circular (AC) 120-XX, and request for comments.

**SUMMARY:** This notice announces the availability of and requests comments on a proposed advisory circular (AC) pertaining to cockpit resource management training. This notice is necessary to give all interested persons an opportunity to present their views on the proposed advisory circular.

**DATES:** Comments must be received within 60 days after notice is published in the **Federal Register.**

**ADDRESS:** Send all comments on the proposed AC to: Federal Aviation Administration, Air Carrier Training Branch, AFS-210, 800 Independence Avenue, SW., Washington, DC 20591. Comments may be inspected at the above address between 9:00 a.m. and 4:00 p.m. weekdays, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Spencer Buxton, AFS-210, at the address above, telephone (202) 267-3762.

**SUPPLEMENTARY INFORMATION:**

#### Comments Invited

A copy of the draft AC may be obtained by contacting the person named above under **"FOR FURTHER INFORMATION CONTACT."** Interested persons are invited to comment on the proposed AC by submitting such written data, views, or arguments as they may desire. Commenters should identify AC 120-XX and submit comments, in duplicate, to the address specified above. All communications received on

or before the closing date for comments will be considered by the FAA before issuing the final AC.

**Background**

Investigations into the causes of air carrier accidents have shown that human error is a contributing factor in approximately 70 percent of all air carrier accidents and incidents. Most airlines, however, provide technical training with little emphasis on the human element. This AC provides guidelines for air carriers to establish training that is designed to increase the efficiency with which flight crewmembers interact in the cockpit by focusing on communication skills, teamwork, task allocation, and decisionmaking.

Issued in Washington, DC, on February 15, 1989.

**D.C. Beaudette,**

*Acting Director, Flight Standards Service, AFS-1.*

[FR Doc. 89-4440 Filed 2-24-89; 8:45 am]

BILLING CODE 4910-13-M

## Urban Mass Transportation Administration

### UMTA Sections 3 and 9 Grant Obligations; Juneau, AK et al.

**AGENCY:** Urban Mass Transportation Administration (UMTA), DOT.

**ACTION:** Notice.

**SUMMARY:** The Department of Transportation and Related Agencies Appropriations Act, 1989, Pub. L. 100-457, signed into law by President Reagan on September 30, 1988, contained a provision requiring the Urban Mass Transportation Administration to publish an announcement in the **Federal Register** each time a grant is obligated pursuant to sections 3 and 9 of the Urban Mass Transportation Act of 1964, as amended. The statute requires that the announcement include the grant number, the grant amount, and the transit property receiving each grant.

This notice provides the information as required by statute.

**FOR FURTHER INFORMATION CONTACT:** Edward R. Fleischman, Chief, Resource Management Division, Department of Transportation, Urban Mass Transportation Administration, Office of Grants Management, 400 Seventh Street, SW., Room 9305, Washington, DC 20590, (202) 366-2053.

**SUPPLEMENTARY INFORMATION:** The Section 3 program was established by the Urban Mass Transportation Act of 1964 to provide capital assistance to eligible recipients in urban areas. Funding for this program is distributed on a discretionary basis. The Section 9 formula program was established by the Surface Transportation Assistance Act of 1982. Funds appropriated to this program are allocated on a formula basis to provide capital and operating assistance in urbanized areas. Pursuant to the statute UMTA reports the following grant information:

SECTION 3 GRANTS

| Transit Property | Grant number | Grant amount | Date obligated |
|---|---|---|---|
| City and Borough of Juneau, Juneau, AK | AK-03-0013 | $70,300 | 02-07-89 |
| Jacksonville Transportation Authority, Jacksonville, FL | FL-03-0078-01 | 1,800,000 | 01-19-89 |
| Brevard County Board of Commissioners, Melbourne-Cocoa, FL | FL-03-0100 | 1,546,371 | 01-12-89 |
| Hillsborough Area Regional Transit Authority, Tampa, FL | FL-03-0093-02 | 4,010,250 | 01-23-89 |
| Metropolitan Transportation Authority, New York, NY | NY-03-0239 | 196,268,175 | 01-31-89 |
| Texas Department of Highways and Public Transportation, Austin, TX | TX-03-0124 | 4,312,500 | 01-20-89 |

SECTION 9 GRANTS

| | | | |
|---|---|---|---|
| None | | | |

Issued on: February 21, 1989.

**Alfred A. DelliBovi,**

*Administrator.*

[FR Doc. 89-4444 Filed 2-24-89; 8:45 am]

BILLING CODE 4910-57-M

## DEPARTMENT OF THE TREASURY

### Public Information Collection Requirements Submitted to OMB for Review

Date: February 21, 1989.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue, NW., Washington, DC 20220.

**Internal Revenue Service**

*OMB Number:* 1545-0215.

*Form Number:* 5712 and 5712-A.

*Type of Review:* Revision.

*Title:* Election to be Treated as a Possessions Corporation Under section 936; Election and Verification of the Cost Sharing or Profit Split Method Under section 936(h)(5).

*Description:* Domestic corporations may elect to be treated as possessions corporations on Form 5712. This election allows the corporation to take a tax credit. Possessions corporations may elect on Form 5712-A to share their taxable income with their affiliates under section 936(h)(5). These forms are used by the IRS to ascertain if corporations are entitled to the credit and if they may share their taxable income with their affiliates.

*Respondents:* Businesses or other for-profit.

*Estimated Number of Respondents:* 2,600.

*Estimated Burden Hours Per Response/Recordkeeper:*

Recordkeeping—4 hours 47 minutes.

Learning about the law of the form—30 minutes.

Preparing and sending the form to IRS—36 minutes.

*Frequency of Response:* Annually.

*Estimated Total Recordkeeping/ Reporting Burden:* 16,588 hours.

*Clearance Officer:* Garrick Shear (202) 535–4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

*OMB Reviewer:* Milo Sunderhauf (202) 395–6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

**Lois K. Holland,**

*Departmental Reports Management Officer.*

[FR Doc. 89–4420 Filed 2–24–89; 8:45 am]

BILLING CODE 4810–25–M

## Public Information Collection Requirements Submitted to OMB for Review

Date: February 21, 1989.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue, NW., Washington, DC 20220.

### Alcohol, Tobacco and Firearms

*OMB Number:* 1512–0117.

*Form Number:* ATF F 5620.7 (2147).

*Type of Review:* Extension.

*Title:* Claim for Drawback of Tax on Cigars, Cigarettes, Cigarette Papers and Cigarette Tubes.

*Description:* ATF F 5620.7 documents that cigars, cigarettes, cigarette papers and tubes were shipped to a foreign country, Puerto Rico or the Virgin Islands, and that the tax was already paid on these products. ATF F 5620.7 is used as the claim filed by a person who paid the tax to claim a drawback for the tax that has already been paid.

*Respondents:* Businesses and other for-profit.

*Estimated Number of Respondents:* 288.

*Estimated Burden Hours Per Response:* 30 minutes.

*Frequency of Response:* On occasion.

*Estimated Total Reporting Burden:* 144 hours.

*Clearance Officer:* Robert Masarsky (202) 566–7077, Bureau of Alcohol, Tobacco and Firearms, Room 7011, 1200 Pennsylvania Avenue, NW., Washington, DC 20226.

*OMB Reviewer:* Milo Sunderhauf (202) 395–6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

**Lois K. Holland,**

*Departmental Reports Management Officer.*

[FR Doc. 89–4421 Filed 2–24–89; 8:45 am]

BILLING CODE 4810–25–M

## Public Information Collection Requirements Submitted to OMB for Review

Date: February 21, 1989.

The Department of Treasury has made revisions and resubmitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue, NW., Washington, DC 20220.

### Internal Revenue Service

*OMB Number:* New.

*Form Number:* 8811.

*Type of Review:* Submission.

*Title:* Information Return for Real Estate Mortgage Investment Conduits (REMICs).

*Description:* Form 8811 will be used to collect the name, address, and phone number of a representative of a REMIC who can provide brokers with the correct income amounts that the broker's clients must report on their income tax returns. It is estimated that there are some 1000 REMICs currently in existence.

*Respondents:* Businesses or other for-profit.

*Estimated Number of Respondents:* 1,000.

*Estimated Burden Hours Per Response/Recordkeeping:*

Recordkeeping—3 hours 50 minutes.

Learning about the law or the form—18 minutes.

Preparing, copying, assembling, and sending the form to IRS—22 minutes.

*Frequency of Response:* Taxpayer must only file once for each obligation issued.

*Estimated Average Recordkeeping/ Reporting Burden:* 3,490 hours.

*Clearance Officer:* Garrick Shear (202) 535–4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

*OMB Reviewer:* Milo Sunderhauf (202) 395–6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

**Lois K. Holland,**

*Departmental Reports Management Officer.*

[FR Doc. 89–4422 Filed 2–24–88; 8:45 am]

BILLING CODE 4810–25–M

## Customs Service

**[T.D. 89–33]**

## Revocation of Individual Broker's License No. 4423; James P. Flannelly

**AGENCY:** U.S. Customs Service, Treasury.

**ACTION:** General notice.

**SUMMARY:** Notice is hereby given that the Secretary to the Treasury on November 1, 1988, pursuant to section 641, Tariff Act of 1930, as amended (19 U.S.C. 1641), and § 111.74 of the Customs Regulations as amended (19 CFR 111.74), revoked the individual broker's license no. 4423 issued to Mr. James P. Flannelly. This action having received no appeal under 19 U.S.C. 1641(e), is effective as of December 31, 1988.

Dated: February 21, 1989.

**Victor G. Weeren,**

*Director, Office of Trade Operations.*

[FR Doc. 89–4436 Filed 2–24–89; 8:45 am]

BILLING CODE 4820–02–M

## VETERANS ADMINISTRATION

## Medical Research Service Merit Review Boards; Meetings

The Veterans Administration gives notice under the Federal Advisory Committee Act, 5 U.S.C. App., of the meetings of the following Federal Advisory Committees.

| | Date | Time | Location |
|---|---|---|---|
| Merit Review Board For: | | | |
| Basic Sciences | March 20, 1989 | 8 a.m. to 5 p.m. | Radisson Park Terrace Hotel.[1] |
| | March 21, 1989 | do | Do.[1] |
| Nephrology | March 20, 1989 | do | The Governor's House.[2] |
| | March 21, 1989 | do | Do.[2] |
| Oncology | March 27, 1989 | do | Radisson Park Terrace Hotel. |
| | March 28, 1989 | do | Do. |
| Neurobiology | March 29, 1989 | do | Holiday Inn Central.[3] |
| | March 30, 1989 | do | Do.[3] |
| | March 31, 1989 | do | Do.[3] |
| Hematology | April 7, 1989 | do | Radisson Park Terrace Hotel. |
| Respiration | April 9, 1989 | 2 p.m. to 10 p.m. | Do. |
| | April 10, 1989 | 8 a.m. to 5 p.m. | Do. |
| Cardiovascular Studies | April 10, 1989 | do | Holiday Inn-Central. |
| | April 11, 1989 | do | Do. |
| Infectious Diseases | April 11, 1989 | do | The Governor's House. |
| | April 12, 1989 | do | Do. |
| Surgery | April 17, 1989 | do | Do. |
| Mental Health and Behavioral Sciences. | April 17, 1989 | do | Holiday Inn-Central. |
| | April 18, 1989 | do | Do. |
| Alcoholism and Drug Dependence | April 26, 1989 | do | Room 119, VA Central Office.[4] |
| Gastroenterology | April 26, 1989 | do | Holiday Inn-Central. |
| | April 27, 1989 | do | Do. |
| Immunology | April 27, 1989 | do | Omni-Shoreham.[5] |
| | April 28, 1989 | do | Do. |
| Endocrinology | April 28, 1989 | do | Holiday Inn-Central. |
| | April 29, 1989 | do | Do. |

[1] Radisson Park Terrace Hotel, 1515 Rhode Island Avenue, NW., Washington, DC 20005.
[2] The Governor's House, Rhode Island Ave. at 17th St., NW., Washington, DC 20036.
[3] Holiday Inn-Central, 1501 Rhode Island Avenue, NW., Washington, DC 20005.
[4] Veterans Administration Central Office, 810 Vermont Avenue, NW., Washington, DC 20420.
[5] Omni-Shoreham, 2500 Calvert Street, NW., Washington, DC 20008.

These meetings will be for the purpose of evaluating the scientific merit of research conducted in each specialty by Veterans Administration investigators working in Veterans Administration Medical Centers and clinics.

The meetings will be open to the public up to the seating capacity of the rooms at the start of each meeting to discuss the general status of the program. All of the Merit Review Board meetings will be closed to the public after approximately one-half hour from the start, for the review, discussion and evaluation of initial, and renewal research projects.

The closed portion of the meeting involves: discussion, examination, reference to, and oral review of site visits, staff and consultant critiques of research protocols, and similar documents. During this portion of the meeting, discussion and recommendations will deal with qualifications of personnel conducting the studies, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, as well as research information, the premature disclosure of which would be likely to significantly frustrate implementation of proposed agency action regarding such research projects. As provided by subsection 10(d) of Pub. L. 92–463, as amended by Pub. L. 94–409, closing portions of these meetings is in accordance with 5 U.S.C., 552b(c)(6) and (9)(B). Because of the limited seating capacity of the rooms, those who plan to attend should contact Dr. Arlene F. Mitchell, Assistant Director for Scientific Review, Medical Research Service, Veterans Administration, Washington, DC, (202) 233–5065, at least five days prior to each meeting. Minutes of the meetings and rosters of the members of the Boards may be obtained from this source.

Dated: February 16, 1989.

**Rosa Maria Fontanez,**

*Committee Management Officer.*

[FR Doc. 89–4394 Filed 2–24–89; 8:45 am]

BILLING CODE 8320–01–M

# Sunshine Act Meetings

Federal Register
Vol. 54, No. 37
Monday, February 27, 1989

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

**EQUAL EMPLOYMENT OPPORTUNITY COMMISSION**

**DATE AND TIME:** 2:00 p.m. (Eastern Time) Monday, March 6, 1989.

**PLACE:** Clarence M. Mitchell, Jr., Conference Room, No. 200–C on the Second Floor of the Columbia Plaza Office Building, 2401 "E" Street, NW., Washington DC. 20507.

**STATUS:** Part of the meeting will be open to the public and part will be closed to the public.

**MATTERS TO BE CONSIDERED:**

*Open Session*

1. Announcement of Notation Vote(s).
2. A Report on Commission Operations—(Tribal Employment Rights Organizations—Given by the Office of Program Operations).
3. Memorandum of Understanding Between the EEOC and the Office of Special Counsel for Immigration Related Unfair Employment Practices, U.S. Department of Justice.

*Closed Session*

1. Litigation Authorization: General Counsel Recommendations.
2. Discussion of a Certain Commissioner's Charges.

Note: Any matter not discussed or concluded may be carried over to a later meeting. (In addition to publishing notices on EEOC Commission meetings in the Federal Register, the Commission also provides a recorded announcement a full week in advance on future Commission sessions. Please telephone (202) 634–6748 at any time for information on these meetings.)

**CONTACT PERSON FOR MORE INFORMATION:** Frances M. Hart, Executive Officer on (202) 634–6748.

This Notice Issued February 22, 1989.

**Frances M. Hart,**
*Executive Officer, Executive Secretariat.*

Dated: February 22, 1989.

[FR Doc. 89–4575 Filed 2–23–89; 11:45 am]

BILLING CODE 6750–06–M

**FEDERAL DEPOSIT INSURANCE CORPORATION**

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:05 p.m. on Tuesday, February 21, 1989, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider the following matters:

Recommendations regarding administrative enforcement proceedings.

Recommendation concerning the Corporation's assistance agreement with an insured bank pursuant to section 13(c) of the Federal Deposit Insurance Act.

Recommendation regarding the liquidation of a bank's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Case No. 47,285 (Amendment)
Plaza Consolidated Office, Kansas City, Missouri

In calling the meeting, the Board determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Director Robert L. Clarke (Comptroller of the Currency), concurred in by Chairman L. William Seidman, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10)).

The meeting was held in the Board Room of the FDIC Building located at 550—17th Street, NW., Washington, DC.

Dated: February 23, 1989.

Federal Deposit Insurance Corporation.

**Robert E. Feldman,**
*Deputy Executive Secretary.*

[FR Doc. 89–4562 Filed 2–23–89; 11:45 am]

BILLING CODE 6714–01–M

**HARRY S. TRUMAN SCHOLARSHIP FOUNDATION**

[BOAC No. 950001]

**TIME AND DATE:** 10:30 a.m., Monday, April 17, 1989.

**PLACE:** The Army and Navy Club, 900 17th Street, NW., Washington, DC 20006.

**STATUS:** The meeting will be open to the public.

**MATTERS TO BE CONSIDERED:**

*Portions Open to the Public*

1. Call meeting to order.
2. Adoption of proposed agenda.
3. Approval of minutes of September 26, 1988 meeting.
4. Report of the Chairman.
   a. Discussion of the 1990–91 scholarship program.
   b. Impact of the President's Budget on the program.
   c. Determination of cost of living increase in maximum level of the scholarship.
   d. Announce speaker for 1990 Awards Ceremony.
   e. Comment on number of nominations.
   f. Discussion of other operational changes.
5. Report of Executive Secretary.
   a. Status of Trust Fund.
   b. Update on Scholars.
   c. Comments on Regional Review Panels, campus Faculty Representatives.
   d. Other remarks.
6. Resolution to empower the Chairman/Executive Secretary to enter/renew contracts, conclude agreements, and conduct other Foundation business.
7. Resolution approving 1989 Scholars and Alternates.
8. New business.
9. Discuss and set date, time and place of Fall Board Meeting.
10. Adjournment.

**CONTACT PERSON FOR MORE INFORMATION:** Malcolm C. McCormack, Executive Secretary, Telephone (202) 395–4831.

**Malcolm C. McCormack,**
*Executive Secretary.*

[FR Doc. 89–4584 Filed 2–23–89; 3:18 pm]

BILLING CODE 6820–AB–M

**POSTAL RATE COMMISSION**

**TIME AND DATE:**

(1) 2:00 p.m., Tuesday, February 28, 1989.
(2) Immediately following the Open Meeting.

**PLACE:** Conference Room, 1333 H Street, NW., Suite 300, Washington, DC.

**STATUS:**

(1) Open.
(2) Closed.

**MATTERS TO BE CONSIDERED:**

(1) Discussion of a notice of proposed rulemaking in the Federal Register on postal volume forecasting models.
(2) Discussion of the Complaint of TCMA, Docket No. C89–1, concerning the private express statutes.

**CONTACT PERSON FOR MORE INFORMATION:** Charles L. Clapp, Secretary, Postal Rate Commission, Room 300, 1333 H Street, NW.,

Washington, DC 20268–0001, Telephone (202) 789–6840.

**Charles L. Clapp,**

*Secretary.*

[FR Doc. 89–4511 Filed 2–23–89; 10:26 am]

**BILLING CODE 7715–01–M**

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**SECURITIES AND EXCHANGE COMMISSION**

Agency Meeting

**"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT:** [54 FR 7129 February 6, 1989].

**STATUS:** Closed/open meetings.

**PLACE:** 450 Fifth Street, NW., Washington, DC.

**DATE PREVIOUSLY ANNOUNCED:** Friday, February 10, 1989.

**CHANGES IN THE MEETING:** Additional meeting/Deletion.

The following item was considered at a closed meeting on Tuesday, February 21, 1989, at 1:00 p.m.

Settlement of injunctive actions.

An open meeting scheduled for Wednesday, February 22, 1989, at 10:00 a.m. has been canceled.

Commissioner Schapiro, as duty officer, determined that Commission business required the above changes.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Daniel Hirsch at (202) 272–2100.

**Jonathan G. Katz,**

*Secretary.*

February 21, 1989.

[FR Doc. 89–4589 Filed 2–23–89; 3:18 pm]

**BILLING CODE 8010–01–M**

# Corrections

Federal Register
Vol. 54, No. 37
Monday, February 27, 1989

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

## FEDERAL MARITIME COMMISSION

**[Petition No. P8-88]**

### American Trucking Associations; Further Notice of Filing of Petition

*Correction*

In notice document 89-3553 appearing on page 6966 in the issue of Wednesday, February 15, 1989, make the following correction:

In the first column, in the headings, the petition number was incorrect and should read as set forth above.

BILLING CODE 1505-01-D

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Care Financing Administration

### 42 CFR Part 483

**[BERC-396-FC]**

### Medicare and Medicaid; Requirements for Long Term Care Facilities

*Correction*

In rule document 89-1697 beginning on page 5316 in the issue of Thursday, February 2, 1989 make the following corrections:

**§ 483.10 [Corrected]**

1. On page 5361, in the first column, in § 483.10(c)(4), in the second line, "[effective date of regulation]" should read "August 1, 1989".

**§ 483.20 [Corrected]**

2. On page 5364, in the second column, in § 483.20(b)(4)(i), in the second line, "[effective date of regulation]" should read "August 1, 1989".

3. On page 5365, in the first column, in § 483.20(e)(3), in the first line, "that" should be removed.

**§ 483.25 [Corrected]**

4. On page 5366, in the second column, in § 483.25(l)(2)(i), in the second line "and" should be removed.

**§ 483.28 [Corrected]**

5. On the same page, in the third column, in § 483.28(c), in the seventh line, "§ 405.1121(1)" should read "§ 405.1121(l)".

BILLING CODE 1505-01-D

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Resources and Services Administration

### Acquired Immune Deficiency Syndrome; Service Demonstration Program Grants

*Correction*

In notice document 89-3433 beginning on page 6758 in the issue of Tuesday, February 14, 1989, make the following correction:

On page 6758, in the third column, in the **SUMMARY**, in the sixth line, "1980" should read "1989".

BILLING CODE 1505-01-D

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 97

**[Docket No. 25783; Amdt. No. 1392]**

### Standard Instrument Approach Procedures; Miscellaneous Amendments

*Correction*

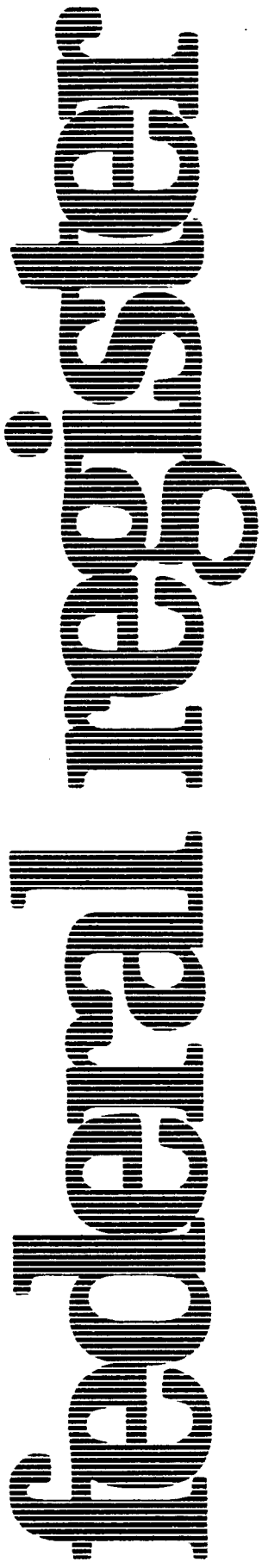
In rule document 89-2445 beginning on page 5587 in the issue of Monday, February 6, 1989, make the following corrections:

1. On page 5592, in the first column, in amendatory instruction 5A, in the 15th line, "of" should read "to".

2. On the same page, in the second column, remove amendatory instruction 5D.

3. On page 5394, in the first column, under "*1695 Leased Property Under Capital Leases*", in paragraph (a), in the first line, "costs" should read "cost".

BILLING CODE 1505-01-D




Monday
February 27, 1989

Part II

# Environmental Protection Agency

40 CFR Part 268
Land Disposal Restrictions; Final Rule

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 268

[FRL-3523-6]

### Land Disposal Restrictions

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency today is amending the schedule for prohibiting hazardous wastes from land disposal. This action places in the third third of the schedule multi-source leachate that is derived from hazardous wastes. Such leachate would thus be prohibited from land disposal no later than May 1990. EPA is taking this step in order to study more fully the most appropriate treatment standards for such leachate.

**EFFECTIVE DATE:** February 27, 1989.

**ADDRESS:** The OSW docket is located in the sub-basement at the following address, and is open from 9:00 to 4:00, Monday through Friday, excluding Federal holidays: EPA, RCRA Docket (OS-305), 401 M Street, SW., Washington, DC 20460.

The public must make an appointment (by calling (202) 475-9327) to review docket materials. Refer to "Docket number F-89-LDLF-FFFFF" when making appointments to review any background documentation for this rulemaking. The public may copy material at a cost of $0.15/page.

**FOR FURTHER INFORMATION CONTACT:** The RCRA/Superfund Hotline at (800) 424-9346 or at (202) 382-3000. For technical information contact Steven E. Silverman, Office of General Counsel (LE-132S), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 382-7706.

### I. Description of Regulatory Action

EPA has decided to amend the schedule for prohibiting hazardous wastes from land disposal to provide that certain multi-source leachate that is derived from hazardous wastes other than the listed dioxin-containing hazardous wastes (wastes F020, F021, F022, F023, F026, F027, and F028) is to be included in the third third of the schedule. By "multi-source leachate" EPA means leachate that is derived from disposal of more than one listed hazardous waste. Thus, such leachate would be prohibited from land disposal by May, 1990. Residues from treating such leachate likewise would be subject to the third third prohibition date, as would residues such as soil or ground water that are contaminated by such leachate (provided that no other restricted wastes (*i.e.*, wastes not initially present in the leachate) are part of the mixture, in which case any standards applicable to those other restricted wastes continue to apply).

EPA is taking this step in order to study more fully the most appropriate section 3004(m) treatment standards for such multi-source leachate. Many members of the hazardous waste management industry, as well as hazardous waste generators, have urged the Agency to take this course. They maintain that, from a chemical standpoint, such leachate differs enough from the wastes from which it is derived that separate treatment standards should be developed. These differences, they maintain, can relate to numbers and identities of hazardous constituents, as well as to the constituents' concentration. They also maintain that there may be chemical changes that occur within a landfill, such as biochemical reactions that increase refractory organics concentrations (measured as COD) to a point where treatability is affected. The waste management industry has also alleged that there are other leachate parameters, such as ammonia, organic acids, TDS (total dissolved solids) and phenolics, that can interfere with wastewater treatment and treatment of wastewater treatment residuals. These parameters can interfere with subsequent treatment of wastewater treatment residuals as well.

The land disposal restrictions regulations presently require multi-source leachate, like other mixtures that contain more than one prohibited hazardous waste, to be treated to meet the treatment standards for each of the hazardous wastes that they contain, and in the case of different standards for a constituent, to meet the most stringent standard that applies (53 FR 31147, August 17, 1988). EPA took this approach because leachate, as a more dilute form of the wastes from which it derives, can be expected to meet the treatment standard that applies to the more concentrated form of the waste. *Id.* at 31149-150. Treatability variances are available to those leachates for which this proves not to be the case.

EPA is not aware of data that disprove the Agency's position. The leachate composition data submitted to the Agency, and the data which EPA has otherwise obtained, shows dilute or non-detectable levels of most hazardous constituents. See *e.g.*, Comments of GSX Chemical Inc., June 16, 1988; SAIC, *Composition of Leachate from Actual Hazardous Waste Sites.* These data are not comprehensive. It may be that more appropriate treatment standards can be developed for multi-source leachate by tailoring specific treatment standards. Furthermore, the data on residues derived from treating leachate—a process that would in many cases concentrate the hazardous constituents—is extremely limited, and further study of treatability of these treatment residues would certainly lead to a better understanding and characterization of them.

If the debate over multi-source leachate were merely one over its treatability, the Agency would be less ready to exercise its discretion to reschedule the land disposal prohibitions. However, in addition to the legitimate questions raised by the waste management industry regarding treatability, there appears to be a *bona fide* emergency regarding available existing treatment capacity. Some of this difficulty comes from the way facility permits are presently drafted, and EPA has initiated steps to allow ready amendment of permits to alleviate these difficulties. See generally 53 FR 46474 (November 17, 1988). But this is only part of the problem. There are presently few wastewater treatment facilities that are capable of treating both organics and inorganics, and they do not appear to provide sufficient capacity to accommodate all of the multi-source leachate presently requiring treatment. Nor does there appear to be sufficient combustion capacity to treat leachate treatment residues (indeed, solids incineration capacity is presently inadequate even for certain hazardous wastes that are generated directly rather than as a result of management activities). See, *e.g.*, Memorandum to JoAnn Bassi, U.S. EPA from Versar, November 3, 1988, *Capacity Analysis for Leachate Waste Volumes at Commercial Landfills.* Nor is it clear that incineration technology is appropriate for many of these sludges, given that they may contain high concentrations of toxic metals.

The Agency is concerned that implementation of the land disposal restrictions statutory provisions not result in environmentally counterproductive results, and also that the Agency act in a way to make implementation of these complicated provisions feasible to the extent allowed by the law. Leachate collection and treatment are now mandated by both federal and state regulations, corrective action orders, and the like. It is desirable and necessary that these activities continue. There must be some legal means of treating and disposing of

this collected leachate and the residues from its treatment. Nor does the Agency believe that delaying the land disposal prohibitions for this type of multi-source leachate causes any substantial environmental harm, or is inconsistent will the overall thrust of the land disposal prohition statutory provisions. EPA is granted discretion in section 3004(g) to order the timing of prohibitions of most listed hazardous wastes, and to set priorities within the schedule, with the most concentrated and highest volume hazardous wastes being prohibited earliest. See section 3004(g)(2). Existing data on this type of multi-source leachate shows that it is not heavily concentrated with toxic contaminants, and for this reason can reasonably be given the lowest priority in the schedule.

The rescheduling adopted in this notice applies to leachate that is derived partially from listed spent solvent wastes (hazardous wastes F001–F005). EPA is sensitive to the view that the prohibition date for spent solvent hazardous wastes has already passed and therefore can only be extended by means of the case-by-case variances in section 3004(h)(3) and § 268.5. It does not appear, however, that the statute is so explicit on the question of whether multi-source leachate not directly attributable to disposal of a particular spent solvent is necessarily to be classified as a spent solvent for purposes of the solvent prohibition date. The Agency does not believe that the issue is settled decisively by the statutory language of section 3004(e), and therefore that EPA retains discretion as to where in the schedule to place such multi-source mixtures.[1] Given that EPA has decided to study this type of leachate as a class, it does not appear to make sense from a policy perspective to force treatment of only one of the many hazardous constituents such leachate contains (*i.e.*, solvents), or to have the land disposal ban apply when there may be significant issues such as those discussed above warranting further study. In addition, according to industry sources, most multi-source leachate contains some spent solvent so that as a practical matter virtually no leachate could be rescheduled unless the solvent prohibition date is not viewed as absolutely binding on these multi-waste codes, ambiguously classifiable leachates. Given the discretion to reschedule, EPA thus believes that an alternative prohibition date is appropriate.

Today's notice does not apply to leachate that is derived from disposal of the listed dioxin-containing wastes. Issues posed as to appropriate classification of leachate containing dioxins are complicated and beyond the scope of this notice.

Finally, EPA notes that it intends no general reclassification of multiple waste mixtures, and no general revision of the treatment standards applicable to waste mixtures. Normally, persons choose to mix hazardous wastes. Mixtures normally should be held to the same treatment standard as the individual wastes because otherwise one could evade a treatment standard by the expedient of mixing. Moreover, if wastes become more difficult to treat as a result of intentional mixing, then ordinarily the mixing should not be occurring. See generally 54 FR 1062 (January 11, 1989). (Multi-source leachate, however, does not result from this type of intentional mixing, and the mixing is less in the control of a landfill owner-operator than in other types of waste management situations.)

As noted above, EPA is rescheduling the prohibition date for multi-source leachate. EPA is rescheduling only multi-source leachate since no questions have been raised as to the validity of the Agency's approach for single-source leachate. Moreover, to the extent leachate derives from disposal of a particular prohibited waste, it is indeed a dilute form of the waste and should be subject to the treatment standards developed for that waste.

EPA notes further that although it is rescheduling multi-source leachate, the Agency is not suggesting any change in its normal approach to developing BDAT, which approach differentiates between wastewaters and non-wastewaters (as defined at 53 FR 31145, August 17, 1988). Furthermore, the Agency's experience to date indicates that treatment of organic non-wastewater is typically based on less variable technologies such as combustion.

## II. Immediate Effective Date

EPA has determined to make today's action effective immediately. It has done so for a number of reasons. The action relates to the section 3004(g) schedule which is absolutely committed to the Agency's discretion and is explicitly not subject to judicial review. Section 3004(g)(3). To the extent the Agency's action is not absolutely committed to its discretion, EPA believes that good cause exists to make the rule effective immediately. As noted above, there presently appears to be a *bona fide* emergency relating to unavailability of treatment capacity for leachate and leachate treatment residues, and unavailability of disposal capacity as well. These problems could thwart the purposes of hazardous waste leachate collection and treatment programs which are essential parts of proper hazardous waste management. The situation in fact appeared serious enough for a motions panel from the District of Columbia Circuit Court of Appeals to grant a stay of applicability of the First Third final rule to leachate, residues from treating such leachate, and ground water contaminated with leachate. (Order of August 18, 1988, clarified by Order of September 23, 1988.) Since such stays are based on many of the same criteria that underlie a good cause finding, EPA is reinforced in its view that circumstances here warrant the step of an immediately effective final rule.

## III. Regulatory Impact Analysis

Under Executive Order 12291, EPA must determine whether a regulation is "major" and, therefore, subject to the requirement of a Regulatory Impact Analysis. Because this action is deregulatory in nature, with negligible economic impact, no economic analysis was conducted.

Since EPA does not expect that the amendments promulgated here will have an annual effect on the economy of $100 million or more, result in a measurable increase in cost or prices, or have an adverse impact on the ability of U.S.-based enterprises to compete in either domestic or foreign markets, these amendments are not considered to constitute a major action. As such, a Regulatory Impact Analysis is not required.

## IV. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. sections 601–612, whenever an agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the impact of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). No regulatory flexibility analysis is required, however, if the head of the agency certifies that the rule will not have a significant impact on a substantial number of small entities.

The hazardous wastes listed here are not generated by small entities (as

[1] The statute does extend the solvent prohibition to soil and debris from CERCLA and RCRA corrective actions, however, indicating that at least some multi-source wastes are covered by the solvent prohibition. RCRA section 3004(e)(3).

defined by the Regulatory Flexibility Act), and the Agency received no comments that small entities will dispose of them in significant quantities. Accordingly, I hereby certify that this regulation will not have a significant economic impact on a substantial number of small entities. This regulation, therefore, does not require a regulatory flexibility analysis.

### V. Paperwork Reduction Act

This rule does not contain any information collection requirements subject to OMB review under the Paperwork Reduction Act of 1980, 44 U.S.C. section 3501 *et seq.*

### List of Subjects in 40 CFR Part 268

Hazardous waste, Land disposal restrictions.

Dated: February 10, 1989.

**Jack Moore,**

*Acting Administrator.*

For the reasons set out in the preamble, Title 40 of the Code of Federal Regulations is amended as follows:

## PART 268—LAND DISPOSAL RESTRICTIONS

1. The authority citation for Part 268 continues to read as follows:

**Authority:** 42 U.S.C. 6905, 6912(a), 6921, and 6924.

2. In § 268.12 paragraph (e) is added to read as follows:

### § 268.12 Identification of wastes to be evaluated by May 8, 1990.

* * * * *

(e) Multi-source leachate that is derived from disposal of any listed waste, except from Hazardous Wastes F020, F021, F022, F023, F026, F027, or F028.

[FR Doc. 89-3986 Filed 2-24-89; 8:45 am]

BILLING CODE 6560-50-M

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| 210-299 | 22.00 | Jan. 1, 1988 |
| 300-399 | 11.00 | Jan. 1, 1988 |
| 400-699 | 17.00 | Jan. 1, 1988 |
| 700-899 | 22.00 | Jan. 1, 1988 |
| 900-999 | 26.00 | Jan. 1, 1988 |
| 1000-1059 | 15.00 | Jan. 1, 1988 |
| 1060-1119 | 12.00 | Jan. 1, 1988 |
| 1120-1199 | 11.00 | Jan. 1, 1988 |
| 1200-1499 | 17.00 | Jan. 1, 1988 |
| 1500-1899 | 9.50 | Jan. 1, 1988 |
| 1900-1939 | 11.00 | Jan. 1, 1988 |
| 1940-1949 | 21.00 | Jan. 1, 1988 |
| 1950-1999 | 18.00 | Jan. 1, 1988 |
| 2000-End | 6.50 | Jan. 1, 1988 |
| 8 | 11.00 | Jan. 1, 1988 |
| **9 Parts:** | | |
| 1-199 | 19.00 | Jan. 1, 1988 |
| 200-End | 17.00 | Jan. 1, 1988 |
| **10 Parts:** | | |
| 0-50 | 18.00 | Jan. 1, 1988 |
| 51-199 | 14.00 | Jan. 1, 1988 |
| 200-399 | 13.00 | [3] Jan. 1, 1987 |
| 400-499 | 13.00 | Jan. 1, 1988 |
| 500-End | 24.00 | Jan. 1, 1988 |
| *11 | 10.00 | [2] Jan. 1, 1988 |
| **12 Parts:** | | |
| 1-199 | 11.00 | Jan. 1, 1988 |
| 200-219 | 10.00 | Jan. 1, 1988 |
| 220-299 | 14.00 | Jan. 1, 1988 |
| 300-499 | 13.00 | Jan. 1, 1988 |
| 500-599 | 18.00 | Jan. 1, 1988 |
| 600-End | 12.00 | Jan. 1, 1988 |
| 13 | 20.00 | Jan. 1, 1988 |
| **14 Parts:** | | |
| 1-59 | 21.00 | Jan. 1, 1988 |
| 60-139 | 19.00 | Jan. 1, 1988 |
| 140-199 | 9.50 | Jan. 1, 1988 |
| 200-1199 | 20.00 | Jan. 1, 1988 |
| 1200-End | 12.00 | Jan. 1, 1988 |
| **15 Parts:** | | |
| 0-299 | 10.00 | Jan. 1, 1988 |
| 300-399 | 20.00 | Jan. 1, 1988 |
| 400-End | 14.00 | Jan. 1, 1988 |
| **16 Parts:** | | |
| 0-149 | 12.00 | Jan. 1, 1988 |
| 150-999 | 13.00 | Jan. 1, 1988 |
| 1000-End | 19.00 | Jan. 1, 1988 |
| **17 Parts:** | | |
| 1-199 | 14.00 | Apr. 1, 1988 |
| 200-239 | 14.00 | Apr. 1, 1988 |
| 240-End | 21.00 | Apr. 1, 1988 |
| **18 Parts:** | | |
| 1-149 | 15.00 | Apr. 1, 1988 |
| 150-279 | 12.00 | Apr. 1, 1988 |
| 280-399 | 13.00 | Apr. 1, 1988 |
| 400-End | 9.00 | Apr. 1, 1988 |
| **19 Parts:** | | |
| 1-199 | 27.00 | Apr. 1, 1988 |
| 200-End | 5.50 | Apr. 1, 1988 |
| **20 Parts:** | | |
| 1-399 | 12.00 | Apr. 1, 1988 |
| 400-499 | 23.00 | Apr. 1, 1988 |
| 500-End | 25.00 | Apr. 1, 1988 |
| **21 Parts:** | | |
| 1-99 | 12.00 | Apr. 1, 1988 |
| 100-169 | 14.00 | Apr. 1, 1988 |
| 170-199 | 16.00 | Apr. 1, 1988 |
| 200-299 | 5.00 | Apr. 1, 1988 |
| 300-499 | 26.00 | Apr. 1, 1988 |
| 500-599 | 20.00 | Apr. 1, 1988 |
| 600-799 | 7.50 | Apr. 1, 1988 |
| 800-1299 | 16.00 | Apr. 1, 1988 |
| 1300-End | 6.00 | Apr. 1, 1988 |
| **22 Parts:** | | |
| 1-299 | 20.00 | Apr. 1, 1988 |
| 300-End | 13.00 | Apr. 1, 1988 |
| 23 | 16.00 | Apr. 1, 1988 |
| **24 Parts:** | | |
| 0-199 | 15.00 | Apr. 1, 1988 |
| 200-499 | 26.00 | Apr. 1, 1988 |
| 500-699 | 9.50 | Apr. 1, 1988 |
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| 1700-End | 15.00 | Apr. 1, 1988 |
| 25 | 24.00 | Apr. 1, 1988 |
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| §§ 1.0-1-1.60 | 13.00 | Apr. 1, 1988 |
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| 300-499 | 15.00 | Apr. 1, 1988 |
| 500-599 | 8.00 | [4] Apr. 1, 1980 |
| 600-End | 6.00 | Apr. 1, 1988 |
| **27 Parts:** | | |
| 1-199 | 23.00 | Apr. 1, 1988 |
| 200-End | 13.00 | Apr. 1, 1988 |
| 28 | 25.00 | July 1, 1988 |

| Title | Price | Revision Date |
|---|---|---|
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| *1–299 | 22.00 | July 1, 1988 |
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[2] No amendments to this volume were promulgated during the period Jan.1, 1988 to Dec.31, 1988. The CFR volume issued January 1, 1988, should be retained.

[3] No amendments to this volume were promulgated during the period Jan. 1, 1987 to Dec. 31, 1988. The CFR volume issued January 1, 1987, should be retained.

[4] No amendments to this volume were promulgated during the period Apr. 1, 1980 to March 31, 1988. The CFR volume issued as of Apr. 1, 1980, should be retained.

[5] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[6] No amendments to this volume were promulgated during the period July 1, 1986 to June 30, 1988. The CFR volume issued as of July 1, 1986, should be retained.

[7] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.